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and

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T.D. 03–08 and 03–09

General Notices

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Part 102

(T.D. 03–08)

RIN 1515–AC80

RULES OF ORIGIN FOR TEXTILE AND APPAREL PRODUCTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with a clarification, the interim rule amending the Customs Regulations to align the existing country of origin rules for certain textile and apparel products with the statutory amendments to section 334 of the Uruguay Round Agreements Act, as set forth in section 405 within Title IV of the Trade and Development Act of 2000. The document also adopts as final the interim rule making technical corrections to the rules of origin for textile and apparel products.

EFFECTIVE DATE: February 25, 2003.

FURTHER INFORMATION CONTACT: Cynthia Reese, Textile Branch, Office of Regulations and Rulings, U.S. Customs Service, Tel. (202) 572–8790.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 334 of the Uruguay Round Agreements Act (URAA), Public Law 103–465, 108 Stat. 4809 (19 U.S.C. 3592), directs the Secretary of the Treasury to prescribe rules implementing certain principles for determining the origin of textiles and apparel products. Section 102.21 of the Customs Regulations (19 CFR 102.21) implements section 334 of the URAA.

Section 405 of Title IV of the Trade and Development Act of 2000 (the Act), Public Law 106–200, 114 Stat. 251, amended section 334 of the URAA. Specifically, section 405(a) amended section 334(b)(2) of the URAA by redesignating paragraphs (b)(2)(A) and (B) as paragraphs

(b)(2)(A)(i) and (ii), and by adding two special rules at new paragraphs (b)(2)(B) and (C) that change the rules of origin for certain fabrics and made-up textile products.

Under section 334, certain fabrics, silk handkerchiefs and scarves were considered to originate where the base fabric was knit or woven, notwithstanding any further processing. As a result of the statutory amendment to section 334 effected by section 405 of the Act, the processing operations which may confer origin on certain textile fabrics and made-up articles were changed to include dyeing, printing and two or more finishing operations. In particular, the amendment to section 334 affected the processing operations which may confer origin on fabrics classified under the Harmonized Tariff Schedule of the United States (HTSUS) as of silk, cotton, man-made fibers or vegetable fibers.

On May 1, 2001, Customs published in the Federal Register (66 FR 21660), as T.D. 01–36, an interim rule amending § 102.21 to implement the rules of origin for the textile products specified in section 405(a) of the Act. On May 10, 2001, a correction to T.D. 01–36 was published in the Federal Register (66 FR 23981). On August 9, 2002, Customs published in the Federal Register (67 FR 51751), as T.D. 02–47, another interim rule which made technical corrections to § 102.21 to reflect the terms of the 2002 Harmonized Tariff Schedule of the United States within the country of origin rules for certain textile and apparel products, as well as a correction regarding the scope of the definition of the term "textile or apparel product". Because T.D. 02–47 was a technical correction document, no comments were requested. Comments were requested in T.D. 01–36.

Discussion of Comments

Two commenters responded to the solicitation of public comment published in T.D. 01–36. A description of the comments received, together with Customs analyses, is set forth below.

Comment:

One commenter suggested that the interim amendments to § 102.21 of the Customs Regulations be changed in regard to certain textile fabrics and made-up articles by removing the requirement that dyeing, printing and finishing of fabric need to occur in order to confer origin. The commenter proposed that, instead, the rule should require that either dyeing and finishing of fabric or printing and finishing of fabric should confer origin. The commenter noted that the recommended change reflects a more common industry practice.

The commenter also requested that Customs amend the interim § 102.21 to change how origin is determined for embroideries. The commenter deemed it unfair in the case of embroideries to adhere to the principle that only the fabric-making process confers origin when the principle has been abandoned for fabrics. The commenter asserts that as the origin rules for fabric that existed prior to the implementation of section 334 have been reintroduced, the same treatment should be accorded to embroideries.

Customs Response:

Section 405(a)(3) of the Act states that dyeing and printing, when accompanied by two or more of specified finishing operations, will confer origin to fabric classified under the HTSUS as of silk, cotton, man-made fiber, or vegetable fiber. The same standard is used to determine origin for specified made-up textile articles. Section 405 contains no reference to embroideries, and Customs is following the language and requirements specified by Congress.

Comments:

One commenter requested that Customs clarify the application of interim rule § 102.21(e) for purposes of determining the origin of down comforters and featherbeds, with outer shells of cotton, respectively classifiable under HTSUS subheadings 9404.90.8505 and 9404.90.9505. The commenter interpreted the interim rule as requiring that origin determinations for these goods be based on where the fabric comprising the outer shell is formed and seeks confirmation of that interpretation.

Customs Response:

Customs agrees with the commenter's interpretation. Section 102.21(e)(2)(i), Customs Regulations, provides, in pertinent part, that the country of origin of goods of HTSUS subheadings 9404.90.85 and 9404.90.95 is the country, territory or insular possession in which the fabric comprising the good was both dyed and printed when accompanied by two or more of specified finishing operations, except for goods classified under those subheadings as of cotton or of wool or consisting of fiber blends containing 16 percent or more by weight of cotton.

Down comforters with outer shells of cotton are classifiable in subheading 9404.90.85, HTSUS, based on a determination that the down component imparts the essential character to the comforter and is therefore the component that determines classification at the eight-digit subheading level. Similarly, down featherbeds with outer shells of cotton are classified in subheading 9404.90.95, HTSUS. *See PillowTex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), *aff'd*, 171 F.3d 1370 (CAFC 1999).

Goods classified under HTSUS subheadings 9404.90.85 (quilts, eiderdowns, comforters and similar articles) and 9404.90.95 (other) are classified at the ultimate statistical level based on the fiber composition of the outer shell fabric. It is for this reason that down comforters and featherbeds with outer shells of cotton are subject to the exclusion set forth in § 102.21(e)(2). Accordingly, origin for these goods is determined pursuant to the rule set forth in § 102.21(e)(1); *i.e.*, origin is conferred in the country in which the fabric comprising the good is formed by a fabric-making process.

It is noted that prior to enactment of section 405, the origin of all goods of HTSUS subheading 9404.90 was the country in which the fabric comprising the good was formed by a fabric-making process. As a re-

sult of the statutory amendment to section 334 effected by section 405, the processing operations that confer origin on certain textile fabrics and made-up articles were changed to include dyeing, printing and two or more finishing operations. Customs is of the view that the exclusion of certain goods classified under HTSUS subheadings 9404.90.85 and 9404.90.95, which include down comforters and featherbeds with outer shells of cotton, of wool, or consisting of fiber blends containing 16 percent or more by weight of cotton, from the dyeing, printing and finishing origin rule, is indicative of Congress' focus on the fiber content of the fabric comprising these goods. In this regard, the Conference Report to the Act states:

> In particular, this dyeing and printing rule would apply to fabrics classified under the Harmonized Tariff Schedule (HTS) as silk, cotton, man-made and vegetable fibers. The rule would also apply to the various products classified in 18 specific subheadings of the HTS listed in the bill, except for goods made from cotton, wool, or fiber blends containing 16 percent or more of cotton.

As the fabric comprising the good in a down comforter with an outer shell of cotton is the cotton fabric of the outer shell, Customs agrees with the commenter that down comforters and down featherbeds with outer shells of cotton are precluded from application of § 102.21(e)(2) and are to have their origin determined based upon the tariff shift rule set forth in § 102.21(e)(1). The fact that the ultimate classification of down comforters and featherbeds with outer shells of cotton is dependent on the fiber content of the fabric of the outer shell offers support for this conclusion.

FURTHER CUSTOMS ANALYSIS

Customs has determined that no changes are necessary to the interim rules, published as T.D. 01–36 and T.D. 02–47, based on these comments. However, it has come to Customs attention, upon further review of T.D. 01–36, that clarification is needed regarding the application of § 102.21(e)(2)(i), (ii) and (iii) in determining the origin of goods of HTSUS subheading 6117.10. The rules set forth in § 102.21(e)(2) are to be applied hierarchically. The rule set forth in § 102.21(e)(2)(i) clearly applies to goods of HTSUS subheading 6117.10, and it is only if the origin of the good cannot be ascertained by application of the rule that the subsequent rules set forth in § 102.21(e)(2)(ii) and (iii) become relevant. The rule set forth in § 102.21(e)(ii) contains an exception for goods of HTSUS subheading 6117.10 that are knit to shape or consist of two or more component parts, so that the rule does not apply to such goods of that subheading. Accordingly, the origin of these goods, if not determinable under § 102.21(e)(i), must be determined by application of § 102.21(e)(2)(iii).

For example, if a man-made fiber scarf of HTSUS subheading 6117.10 consisted of two or more component parts and all of the fabric from which the component parts were formed was dyed and printed and finished as specified in § 102.21(e)(2)(i), the origin of the scarf would be as-

certained under § 102.21(e)(2)(i); that is, it would be the country in which the fabric was dyed and printed and finished. However, if the fabric of the scarf was only dyed and finished, then § 102.21(e)(2)(i) would not apply and origin would be determined pursuant to § 102.21(e)(2)(iii).

In order to clarify the application of the rules set forth in § 102.21(e)(2), Customs is amending § 102.21(e)(2)(iii) as set forth in T.D. 01–36 to provide that § 102.21(e)(2)(iii) should be applied if the country of origin cannot be determined under § 102.21(e)(2)(i).

Non-substantive editorial changes are also made to paragraph (e)(2)(ii), and the introductory text to paragraph (e)(2)(iii) of the interim rule, whereby the references to "(i) above" in both paragraphs are replaced by the more specific cite to "paragraph (e)(2)(i) of this section."

It has also come to Customs attention that there may be some confusion as to whether certain finishing operations qualify under § 102.21(e)(2)(i) for purposes of determining the country of origin of certain goods. The finishing operations listed in § 102.21(e)(2)(i) are listed in section 405(a)(3) of the Act and Customs has no authority to deviate from this list to allow other processes to effect an origin determination. However, Customs does recognize that different terms may be used in the textile industry to refer to the same process. Accordingly, Customs will entertain arguments through the rulings procedure as to whether finishing processes referred to by different terms are identical to the named processes.

CONCLUSION

In accordance with the discussion set forth above, Customs has determined to adopt as a final rule the interim rule published in the Federal Register (66 FR 21660) on May 1, 2001, as T.D. 01–36, with the correction published in the Federal Register (66 FR 23981) on May 10, 2001, and the interim rule published in the Federal Register (67 FR 51751) on August 9, 2002, as T.D. 02–47.

INAPPLICABILITY OF DELAYED EFFECTIVE DATE

These regulations serve to align the Customs Regulations with the statutory amendments to section 334 of the URAA, as set forth in section 405 within Title IV of the Act, which went into effect May 18, 2000, and with the 2002 Harmonized Tariff Schedule of the United States. The regulatory amendments inform the public of changes to the processing operations deemed necessary to confer country of origin status to certain textile fabrics or made-up articles by way of amendment to the tariff shift rules applicable to select textile goods. For these reasons, Customs has determined, pursuant to the provisions of 5 U.S.C. 553(d)(3), that there is good cause for dispensing with a delayed effective date.

THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Because these amendments serve to conform the Customs Regulations to reflect statutory amendments, pursuant to the provisions of the

Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that these amendments will not have a significant impact on a substantial number of small entities. Further, these amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

DRAFTING INFORMATION

The principal author of this document was Ms. Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 102

Customs duties and inspection, Imports, Rules of Origin, Trade agreements.

AMENDMENT TO THE REGULATIONS

For the reasons stated above, the interim rule amending § 102.21 of the Customs Regulations (19 CFR 102.21) which was published at 66 FR 21660–21664 on May 1, 2001, and corrected at 66 FR 23981 on May 10, 2001, and the interim rule which was published at 67 FR 51751–51752 on August 9, 2002, are adopted as a final rule with the changes set forth below.

PART 102—RULES OF ORIGIN

1. The authority citation for part 102 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

2. In § 102.21, paragraph (e)(2)(ii) and the introductory text to paragraph (e)(2)(iii) are revised to read as follows:

§ 102.21 Textile and apparel products.

* * * * * * *

(e) Specific rules by tariff classification.

* * * * * * *

(2) * * *

(ii) If the country of origin cannot be determined under paragraph (e)(2)(i) of this section, except for goods of HTSUS subheading 6117.10 that are knit to shape or consist of two or more component parts, the country of origin is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process; or

(iii) For goods of HTSUS subheading 6117.10 that are knit to shape or consist of two or more component parts, if the country of origin cannot be determined under paragraph (e)(2)(i) of this section:

* * * * * * *

ROBERT C. BONNER,
Commissioner of Customs.

Approved: February 19, 2003.
TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, February 25, 2003 (68 FR 8711)]

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19 CFR Parts 141 and 142

(T.D. 03–09)

RIN 1515–AC91

SINGLE ENTRY FOR SPLIT SHIPMENTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to allow an importer of record, under certain conditions, to submit a single entry to cover a single shipment which was split by the carrier into multiple portions which arrive in the United States separately. These amendments implement statutory changes made to the merchandise entry laws by the Tariff Suspension and Trade Act of 2000.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT:

For operational or policy matters: Robert Watt, Office of Field Operations, (202) 927–0279.

For legal matters: Gina Grier, Office of Regulations and Rulings, (202) 572–8730.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 1460 of Public Law 106–476, popularly known as the Tariff Suspension and Trade Act of 2000, amended section 484 of the Tariff Act of 1930 (19 U.S.C. 1484) by adding a new paragraph (j) in order to provide for the treatment of certain multiple shipments of merchandise as a single entry.

The new paragraph (j) involves two scenarios. First, section 1484(j)(1) addresses a problem long encountered by the importing community in entering merchandise whose size or nature necessitates that the merchandise be shipped in an unassembled or disassembled condition on more than one conveyance. Second, section 1484(j)(2) offers relief to importers whose shipments which they intended to be carried on a single conveyance are divided at the initiative of the carrier. As to both these matters, the legislation is silent as to the affected modes of transportation, thus indicating that the new law is to apply to merchandise shipped by air, land or sea.

By a document published in the Federal Register (66 FR 57688) on November 16, 2001, Customs proposed regulations to implement 19 U.S.C. 1484(j)(2) relating to shipments which are divided by carriers; these shipments are referred to as "split shipments". These final regulations today concern such split shipments.

It is noted that by a separate document published in the Federal Register (67 FR 16664) on April 8, 2002, Customs proposed regulations to implement 19 U.S.C. 1484(j)(1) concerning the entry of shipments of unassembled or disassembled entities that arrive on more than one conveyance. This latter proposed rule will be the subject of a final rule document that should be published in the Federal Register in the near future.

SPLIT SHIPMENT DEFINED

Generally speaking, a split shipment consists of merchandise that is capable of being transported on a single conveyance, and that is delivered to and accepted by a carrier in the exporting country as one shipment under one bill of lading or waybill, and is thus intended by the importer to arrive as a single shipment. However, the shipment is thereafter divided by the carrier into different parts which arrive in the United States at different times, often days apart.

In practice, shipments often become split after being delivered intact to a carrier. The movement of cargo as a split shipment on multiple conveyances appears to be a regular and routine industry practice when shipped by air. There are various reasons for a shipment to be split by a carrier, such as limited space, the need to balance weight distribution on a conveyance, and offloading for safety concerns.

The Customs Regulations ordinarily require, with certain exceptions not here relevant, that all merchandise arriving on one conveyance and consigned to one consignee be included on one entry (see § 141.51, Customs Regulations (19 CFR 141.51)). While today's final regulations permit the acceptance of a single entry in the case of such a split shipment, importers may, of course, continue to file a separate entry for each portion of a split shipment as it arrives, if they so choose.

FILING OF SINGLE ENTRY FOR SPLIT SHIPMENT UNDER PROPOSED RULE

In principal part, the November 16, 2001, Federal Register document proposed to permit the filing of a single entry to cover a split shipment

provided that: (1) the subject shipment was capable of being transported on a single conveyance, and was delivered to and accepted by a carrier in the exporting country under one bill of lading or waybill and was thus intended by the importer to be a single shipment; (2) the shipment was thereafter split or deconsolidated by the carrier, acting on its own; (3) the split-portions of the shipment remain consigned to the same party in the United States to whom they were destined in the original bill of lading or waybill; and (4) those portions of the split shipment that could be covered under the entry arrived directly from abroad at the same port of importation in the United States within 10 calendar days of the date of the portion that arrived first.

Specifically, to implement 19 U.S.C. 1484(j)(2) under which an importer could make a single entry for a split shipment, it was proposed to add a new § 141.57 to the Customs Regulations (19 CFR 141.57), in addition to making certain amendments to § 142.21 of the Customs Regulations (19 CFR 142.21). Also, a minor conforming change was to be made as well to § 141.51 of the Customs Regulations (19 CFR 141.51).

By a document published in the Federal Register (67 FR 3135) on January 23, 2002, the period of time within which public comments could be submitted in response to the proposed rule was re-opened until February 14, 2002.

Discussion of Comments

A total of twenty-two commenters responded to the notice of proposed rulemaking. A description of the issues raised by these commenters, together with Customs response to these issues is set forth below.

General Comments on the Proposed Rule

Comment:

It is improper for Customs to propose regulations for split shipments and for unassembled and disassembled entities in two separate regulation packages.

Customs Response:

Although 19 U.S.C. 1484(j)(1) and (j)(2) allow for the filing of a single entry for shipments which arrive at different times, sections 1484(j)(1) and 1484(j)(2) ultimately address two very different situations. As a result, and to minimize confusion between the two provisions, Customs decided to address each provision in separate rulemakings.

Comment:

The proposed regulations providing for a single entry for shipments split by the carrier do not reflect an agreement that Customs reached prior to the enactment of 19 U.S.C. 1484(j)(2) on the manner in which such split shipments would be regulated.

Customs Response:

The legislation supersedes any informal agreements that Customs and the trade may have made prior to its enactment. In the proposed

rule, Customs endeavored to reflect the intent of Congress in enacting 19 U.S.C. 1484(j)(2). Customs thoroughly reviewed the comments that were received in response to the proposed rule and, in this final rule, has made a number of changes to the regulations as initially proposed for split shipments.

Comment:

The split shipment procedures followed by Customs at Los Angeles International Airport and at John F. Kennedy Airport in New York are preferable to those reflected in the proposed rule.

Customs Response:

Customs reviewed the split shipment procedures at these airports. In developing the proposed regulations, Customs included the most operationally feasible features of the procedures for handling split shipments at those locations.

Comment:

It was asked whether entries of split shipments may be processed through the Pre-Arrival Processing System (PAPS). The PAPS system allows electronic entries to be submitted prior to the time a truck arrives at the United States border.

Customs Response:

Customs plans to issue a Federal Register notice on PAPS shortly and will address this comment then.

Comment:

It is contended that, by allowing for a single entry for merchandise arriving on separate conveyances at different times, 19 U.S.C. 1484(j) will enable the circumvention of laws restricting the importation of softwood lumber.

Customs Response:

Customs does not believe that 19 U.S.C. 1484(j)(2) will have an adverse impact on United States lumber interests; section 1484(j)(2) merely allows an importer to file one entry to cover a single shipment which is split by the carrier and which arrives in the United States separately.

Comment:

The proposed rule will interfere with the Government's collection of waterborne commerce statistics, because the ability to match arriving commodities with the actual transporting vessel will be compromised. For this reason, it is recommended that vessel shipments be eliminated from the proposed rule.

Customs Response:

This comment appears to address the fact that statistical information is collected on the CF 7501 entry summary, which currently can accom-

modate data pertaining to only one conveyance. Customs will endeavor to design future information collection systems which capture more comprehensive data. As 19 U.S.C. 1484(j)(2) is silent as to the modes of transportation involved, Customs concluded that the legislation implicitly intended to include within its scope all modes of transportation. Thus, vessel shipments may not be excluded from the split shipment rulemaking. However, Customs anticipates that split shipments should occur infrequently in the vessel environment, because it is unlikely that oceangoing carriers, most of which have large cargo capacities, will need to split shipments due to space, weight or other logistical concerns.

Comment:

The proposed split shipments program may compromise the quality of statistics, particularly with respect to freight charges, which will be obtained from Customs Form (CF) 7501. As such, Customs should develop a means of collecting multiple carrier information under ACE (Automated Commercial Environment). Furthermore, in this same vein, it is remarked that numerous, albeit unidentified, issues relating to automation exist in connection with split shipments that warrant further discussion prior to implementation of final regulations concerning such shipments.

Customs Response:

Customs is aware of the concerns relating to the collection of statistics under the ACE and will address these issues in developing and refining the ACE system. In this regard, however, the collection of statistics under the ACE system as well as any issues related to automation fall outside the scope of this rulemaking.

Comment:

Customs should utilize a new type of entry for handling split shipments. It is recommended in this context that the importer enter the entire value of the shipment when the first portion arrives, and then flag the entry for reconciliation following the arrival of all portions of the shipment that are covered under the entry.

Customs Response:

Customs disagrees. The introduction of a new type of entry to handle split shipments is unnecessary for the successful implementation of the split shipment program. Resort to the reconciliation method for processing split shipments would defeat the purpose of the legislation, which is to allow the filing of a *single* entry for a shipment whose portions arrive separately. Under the suggested reconciliation approach, a minimum of two entries would have to be filed—a consumption entry and a reconciliation entry. Of course, importers who file single entries for shipments which have been split may flag those entries for reconciliation if the entries have unresolved issues of the kind which are entitled to be resolved under the established entry reconciliation program.

Comment:

Customs should adopt an alternative procedure under which it would grant blanket permission to importers to file the entry summary for an air split shipment in its entirety at the time of the arrival of the first portion; then allow incremental release for that portion and all portions that thereafter arrive; followed by the submission of a final accounting or report by the importer. Any total quantity variances would be reported through standard reconciliation procedures.

Customs Response:

Customs lacks the operational ability at the present time to implement the type of procedure described. Also, as indicated in the response to the previous comment, Customs disagrees with the general use of the reconciliation procedure as a method for processing split shipments.

Comment:

Customs should eliminate the three-year restriction on the reuse of air waybill numbers and should allow the unique identifier for the bill of lading to be composed of six elements rather than two. Also, Customs should allow the air waybill number to be used as the in-bond control record for each arrival of a shipment.

Customs Response:

These suggestions are outside the scope of this rulemaking. However, it is noted that Customs in a recently published rulemaking amended its regulations to allow air waybill numbers to be reused after one year.

Comment:

It is asked whether Customs will post the release of each part of a split shipment in the Air Automated Manifest System (AMS).

Customs Response:

To enable Customs to post release information for each part of a split shipment, the entry filer will need to inform the appropriate Customs personnel where the entry is filed in order for such personnel to make the necessary corrections and manually enter the relevant information for each arrival in the Air AMS. Customs Office of Information and Technology (OIT) intends to implement programming changes so that release information may be posted in the AMS system automatically.

Comment:

A question is posed as to how split shipments would be processed if they require inspection by the U.S. Department of Agriculture (USDA).

Customs Response:

Split shipments requiring inspection by other Government agencies will be processed in the same manner as regular (non-split) shipments that require such inspection.

Comment:

The proposed split shipment regulations should provide for the amendment of certificates of origin that are used in preferential trade

programs so as to eliminate the need to obtain revised certificates from the importer or producer covering each portion of a split shipment that arrives.

Customs Response:

Customs does not believe this is necessary. Most certificates of origin are blanket certificates, designed to cover merchandise appearing on many entries. When a certificate of origin covering a single entry pertains to merchandise in a shipment which is split, and separate entries covering different portions of the shipment are filed (either by choice or because a portion of the shipment arrives too late to be covered under the split-shipment entry), copies of the certificate may be made to apply to any additional entries.

GENERAL RULE—AMENDMENT OF § 141.51

Comment:

Given that importers prefer filing a single entry when a split shipment occurs, § 141.51 should be revised to treat separate entries in such circumstances as the exception rather than the rule.

Customs Response:

Customs disagrees. Allowing an importer to file one entry for shipments which arrive at different times is an exception to the longstanding general rule that all merchandise consigned to one consignee which arrives on one vessel, aircraft or vehicle must be included in one entry. The exception carved out for split shipments is simply one of several exceptions to this general rule, and applies only to a limited number of entries. The general rule itself has not been changed as the result of the enactment of 19 U.S.C. 1484(j).

DEFINITION OF SPLIT SHIPMENT—PROPOSED § 141.57(b)

Comment:

Customs should broaden the types of split shipments which are eligible for single entry treatment. It is advocated, for example, that the proposed rule cover shipments that are split at the port of arrival for transportation separately to the port where entry is to be made. It is stated that this situation can result when merchandise which arrives in the United States on a single conveyance is split at the port of arrival into separate portions because an insufficient number of vehicles are available at the time of arrival to simultaneously transport the entire shipment to the port where entry is made.

Customs Response:

Customs disagrees. The purpose of 19 U.S.C. 1484(j)(2) is to furnish a mechanism by which one entry may be filed for a shipment that is split by the original carrier to which the shipment was delivered at the foreign port for transportation to the United States. To expand coverage under the law to shipments that are split after importation into the United States would exceed the purview of the statute.

Comment:

It is a distortion of the intent of the statute to define a split shipment as being a shipment which is delivered to and accepted by the carrier as a single shipment under one bill of lading. It is contended that the definition of a split shipment to this effect fails to take into account situations in which the importer delivers goods to the carrier as a single shipment, but the carrier then informs the importer that the shipment must be carried on several conveyances due to insufficient cargo space remaining on currently available ships. Under the proposed rule, such a shipment would not qualify as a split shipment because it would not have been accepted by the carrier as a single shipment.

Customs Response:

Customs does not believe that the definition of a split shipment under § 141.57(b) distorts the intent of the statute. Rather, it is Customs' view that the purpose of 19 U.S.C. 1484(j)(2) is to offer relief to importers whose shipments have been split by the carrier after the carrier has accepted the shipment with the importer's understanding that the shipment would be transported on a single conveyance. Under those circumstances, the importer would have a realistic expectation that the shipment would arrive at one time and that the importer would thus be able to file one entry. However, as described in the comment, the importer would already know prior to concluding shipping arrangements with the carrier that the shipment would be transported on different conveyances and would arrive in the United States at different times.

Comment:

The proposed requirement that all portions of a split shipment arrive within 10 calendar days of the date of arrival of the first portion does not square with modern shipping realities. The 10 calendar day arrival time should be extended to 30 or 90 days, in order to more accurately reflect the Congressional intent that split shipments can occur over a period of time. In the alternative, if the portions of a split shipment are to be limited to arriving within 10 calendar days of one another, Customs should change 10 calendar days to 10 business days.

Customs Response:

Customs believes that the overwhelming majority of split shipment transactions which may occur may be easily accommodated within the 10 calendar day period as originally proposed. Furthermore, the use of a 10 calendar day arrival window affords an importer sufficient time to file an entry summary within 10 working days from the time the first portion of the split shipment is released, given that a 10 working day period will always be longer than a 10 calendar day period.

Comment:

A question is raised as to whether there is a limit to the number of portions into which a carrier may split a master shipment.

Customs Response:

There is no limit to the number of portions into which a carrier may split a shipment.

Comment:

The proposed requirement that all conveyances carrying a split shipment initially arrive at the same port of importation in the United States should be eliminated because routing merchandise from one United States port to another is a standard business practice exercised by carriers.

Customs Response:

Customs agrees. Accordingly, proposed § 141.57(b)(3) is revised in this final rule by eliminating the requirement that all portions of a split shipment arrive at the same port of importation in the United States. Instead, all portions of the split shipment must timely arrive at the same port of entry in the United States, as listed on the original bill of lading. Any portion of a split shipment that arrives at a different port must be transported in-bond to the port of destination where entry will be made; and such in-bond transportation to the port of destination must occur before the transported merchandise may be released by Customs. In conformance with this requirement, proposed §§ 141.57(d)(1), (d)(2), (e), (i), (j)(1), and 142.21(g) are appropriately changed in this final rule.

NOTICE TO CUSTOMS THAT
SHIPMENT HAS BEEN SPLIT—PROPOSED § 141.57(c)

Comment:

It is asked how the importer would know whether the carrier has informed Customs of a split shipment.

Customs Response:

Under § 141.57(c), it is expressly the responsibility of the importer, not the carrier, to notify Customs that the importer's shipment has been split by the carrier. To this end, the adequacy of communication between the importer and the carrier is a private matter between those parties.

Comment:

Proposed § 141.57(c) should be revised to simply require that the importer notify Customs of a split shipment prior to the filing of the entry summary, in recognition that the importer's knowledge of the circumstances may be limited or nonexistent.

Customs Response:

Customs disagrees. Section 141.57(c) requires that notification be given as soon as the importer becomes aware that the shipment has been split, but that in all cases such notification must be made before the entry summary is filed. This requirement is specifically designed to give an importer maximum flexibility in informing Customs of the intention to file a single entry for a split shipment, in recognition of the fact that an importer may learn of a split shipment at different times.

Comment:

Further details are requested concerning the form of the notification. It is asked whether an electronic message (e-mail) would be sufficient.

Customs Response:

Section 141.57(c) requires that such notification be given to Customs in writing. To this end, Customs would prefer that the notice be written on the front of Customs Form (CF) 3461 or that notice be submitted in the form of a letter if an electronic CF 3461 is filed. The letter could also be faxed to the applicable port.

Customs is currently incapable of accepting e-mail at all ports. Provision for electronic notification will be made in the Automated Commercial Environment (ACE) system.

Comment:

Under the current systems for handling split shipments employed at Los Angeles International Airport and at John F. Kennedy Airport in New York, the carrier is required to include each split portion on the manifest. Hence, it is asserted that the manifest should constitute the advance notification to Customs that the shipment has been split. If the importer does not file a separate entry for each arriving portion, it should be understood that the importer intends to file a single entry for the entire split shipment.

Customs Response:

Customs disagrees. The advance notice is a statutory requirement which lets Customs know that the importer has elected to file a single entry for all portions of the split shipment. Mere notification that the shipment has been split is not notification by the importer that a single entry will be filed for the shipment.

ENTRY OR PERMIT FOR IMMEDIATE DELIVERY—PROPOSED § 141.57(d)

Comment:

It appears that the immediate delivery procedures for a split shipment require that the merchandise in the shipment be delivered to the carrier in the foreign country under one invoice. However, it is a common business practice for a shipment to contain merchandise covered by multiple invoices. As long as the merchandise is tendered to the carrier at the same time, there should be no limitation on the number of invoices involved.

Customs Response:

Customs agrees. Provided the merchandise is delivered to the carrier as set forth in proposed § 141.57(b)(1), there should be no limitation on the number of invoices involved. Paragraphs (d)(1) and (d)(2) of proposed § 141.57 are amended accordingly in this final rule; and a conforming change to proposed § 142.21(g) is made as well in this final rule.

Comment:

The release procedures in proposed § 141.57(d)(1) and (d)(2) should allow for one Customs Form (CF) 3461 to be filed and applied against all

portions of the shipment. Then, if any portion of the shipment still has not arrived within the prescribed 10 day period, such portion would be deducted from the invoice(s) used on the entry summary for the shipment, and that portion would then be entered separately. In the alternative, should Customs determine that adjusted CF 3461 copies are necessary, it is suggested that Customs allow the electronic filing of the adjusted CF 3461s.

Customs Response:

It is initially noted that under the release procedure in § 141.57(d)(1), only one CF 3461 will need to be filed. By contrast, under the procedure in § 141.57(d)(2) which provides for the separate release of each portion of a split shipment as it arrives, Customs finds that requiring an adjusted copy of the CF 3461 to be submitted for each portion of the shipment is necessary in order to afford a mechanism by which the importer and Customs may easily and effectively keep track of the specific merchandise contained in any given portion of the shipment. However, Customs agrees that multiple CF 3461 copies are unnecessary when both the carrier and the importer are automated. In the case of such automation, adjustments may be made electronically to show the quantity of merchandise contained in each portion of the shipment as it arrives. Proposed § 141.57(d)(2) is thus amended in this final rule to reflect that if both the carrier and the importer are automated, such adjustments may be made electronically through the Customs ACS (Automated Commercial System).

Comment:

Under the incremental release procedure in proposed § 141.57(d)(2), clarification is needed as to what is meant by the quantity of merchandise that must be reflected on the adjusted Customs Form (CF) 3461 that is submitted to Customs upon the arrival of each portion of a split shipment.

Customs Response:

The quantity means the number of pieces, boxes, cartons, and the like, which are contained in the particular portion of the split shipment as it arrives, relative to the total number delivered by the shipper to the foreign carrier. To minimize confusion in this regard, proposed § 141.57(d)(2) is revised in this final rule to make clear that the adjusted quantity will reflect the quantity in that particular portion relative to the quantity contained in the entire shipment as delivered to and accepted by the carrier in the exporting country.

Comment:

It is contended that 19 U.S.C. 1484(j)(2) represents a statutory exception to the well established principle that entry may only be made after merchandise has been imported. As such, instead of the procedure in proposed § 141.57(d)(2), which requires a special permit for immediate delivery for portions of a split shipment that are released incrementally

following their arrival, Customs should allow the entire shipment to be entered at the time that the first portion of the shipment is imported.

Customs Response:

Customs disagrees. Section 1484(j)(2) is not an exception to the general rule that importation must precede entry. Rather, the law simply allows one shipment which is split by the carrier and which arrives in the United States at different times to be covered under one entry. Previously, each portion would have required a separate entry. Under section 1484(j)(2), however, importers of merchandise whose shipments have been split by the carrier may either continue to file a separate entry for each portion, or they may file a single entry for all of the portions which arrive within a prescribed period of time.

Nevertheless, resort to the immediate delivery procedure of § 141.57(d)(2) is only necessary when the importer wishes to file one entry, but wants each portion to be released as it arrives. Under this immediate delivery procedure, since the time of entry occurs, not upon release, but upon the filing of the entry summary, § 141.57(d)(2) ensures that all portions of the split shipment are imported prior to the entry being filed. Importers who want to file one entry but who object to using the immediate delivery procedure in § 141.57(d)(2) may instead opt to use the procedure in § 141.57(d)(1), under which one entry may be filed but release of the merchandise is delayed until all portions of the shipment have arrived.

NECESSARY MANIFEST DATA TO SECURE RELEASE OF SHIPMENT—PROPOSED § 141.57(e)

Comment:

Further elaboration is requested concerning the process by which a carrier would make adjustments to the quantity set forth in the manifest as necessary to secure the incremental release of the shipment under proposed § 141.57(d)(2). It is specifically asked how such adjustments would be administered.

Customs Response:

Carriers are required under § 141.57(e) to present manifest information to Customs which reflects exact information for each portion of a split shipment in order to qualify the split shipment for incremental release, pursuant to § 141.57(d)(2), as each portion of the shipment arrives. Carriers may accomplish the presentation of this adjusted manifest information either on a paper manifest or electronically if both the carrier and the importer are operational on the Customs Automated Commercial System (ACS), as noted above.

FILING OF ENTRY SUMMARY FOR SPLIT SHIPMENT—PROPOSED § 141.57(g)

Comment:

Proposed § 141.57(g)(2)(ii) contains a technical contradiction in requiring the entry summary to be filed no later than 10 working days after the first cargo release, while in effect not allowing summary filing

before the arrival of the last portion of the split shipment which is to be included on the entry.

Customs Response:

There is no contradiction. Since all portions of the shipment must arrive within 10 calendar days of the portion that arrives first, and the entry summary must be filed under § 141.57(g)(2)(ii) within 10 working days from the date of first release of a portion of the shipment, there should be sufficient time for all portions of the split shipment to arrive before the entry summary is required to be filed. However, should any portions not arrive within 10 calendar days of the portion that arrived first, such late-arriving portions would need to be separately entered, as prescribed in § 141.57(i).

SEPARATE ENTRIES REQUIRED—PROPOSED § 141.57(i)

Comment:

Regarding portions of a shipment that do not arrive within the required 10 calendar day period, it was asked whether the consignee or agent would be responsible for paying full duty on the entire shipment before it is complete.

Customs Response:

The importer of record will only be responsible for paying duty based on the value and/or quantity of merchandise contained in those portions of the split shipment that arrive within the required 10 calendar day time frame and are thus included in the split-shipment entry. As such, when a portion of a split shipment does not arrive within the prescribed 10 calendar day period, that portion will not be included on the entry, and thus no duty will yet be due on that portion. Duty on any delayed portion will become due when the portion does arrive and a separate entry for that portion is filed.

Comment:

Merchandise classifiable under the same subheading of the Harmonized Tariff Schedule of the United States (HTSUS) may nevertheless be subject to different rates of duty if the applicable rate already applied against one portion of a split shipment changes and the changed rate is thereafter assessed against a second portion. It is stated in particular that this problem could arise where a change in the duty rate occurs after any portion of the split shipment is accepted for transportation in-bond to the port of destination.

Customs Response:

Customs agrees. Under 19 CFR 141.69(b), the duty rate applied to merchandise in any portion of a split shipment that is transported in-bond to the port of destination would be the duty rate in effect for such merchandise when Customs accepts the in-bond transportation entry; merchandise in any other portion of the shipment, however, would thereafter generally be subject to the rate of duty in effect at the time of

entry pursuant to 19 CFR 141.68(a)(1) or (c), as applicable. As a result, if merchandise classifiable under the same subheading of the HTSUS arrives in the United States at different times as part of a split shipment, a change in the rate of duty that occurs during this time with respect to such merchandise could result in two different rates of duty being assessed against the merchandise on the same split shipment entry.

This would present an administrative/operational problem for Customs because current Customs systems are incapable of accepting different duty rates on one entry for merchandise that is classifiable under the same HTSUS subheading. Hence, a separate entry will be required for any portion of a split shipment in those rare instances where necessary to preclude the application of different rates of duty on a split shipment entry for merchandise that is identically classifiable under the HTSUS. Proposed § 141.57(i) is changed in this final rule to add a provision to this effect.

IMPORTER REVIEW OF ENTRY; EVIDENCE OF SPLIT SHIPMENT—PROPOSED § 141.57(j)

Comment:

Under proposed § 141.57(j)(1), Customs should rely primarily upon carriers, rather than importers, to obtain timely and accurate split shipment information because it is the carriers' decision to split the shipments in the first place.

Customs Response:

Customs disagrees. While it is the case that shipments are split at the initiative of the carrier, it is the importer, not the carrier, who elects to file a single entry for all portions of a split shipment. Since the importer files the entry, it is properly the responsibility of the importer to ensure that the entry is correct and that it accurately reflects the actual amount, value, correct classification and rate of duty of the merchandise covered under the entry, as required in § 141.57(j)(1).

Comment:

It is unnecessary to require in proposed § 141.57(j)(2) that the importer maintain sufficient documentary evidence to substantiate that the splitting of a shipment was done by the carrier acting on its own. Importers do not want their shipments to be split because this causes their shipments to be delayed.

Customs Response:

Customs disagrees. Under 19 U.S.C. 1484(j)(2), the use of the single entry procedure for separate portions of a split shipment is contingent upon the shipment having been split at the instruction of the carrier. The importer must therefore maintain suitable documentary evidence to substantiate that the shipment was split by the carrier on its own initiative.

Comment:

In proposed § 141.57(j)(2), the requirement that an importer maintain a copy of the originating bill of lading or air waybill is essentially impossible as carriers by law do not make documents of this nature available to the importer due to the fact that such documents contain confidential freight rate information. An importer should not even be required to obtain a letter from the carrier as proof that the carrier split the shipment on its own initiative because carriers would generally not be timely in providing such letters. It is contended that the carrier should be the party responsible for keeping records of the shipments which they have chosen to split.

Customs Response:

It is again emphasized that since the importer is the party who elects to file a single entry covering multiple portions of a split shipment, it is properly the responsibility of the importer to substantiate its right to do so. However, Customs agrees that an importer who elects to file a single entry for a split shipment but who never receives a copy of the originating bill of lading or air waybill cannot be required to maintain or produce what he does not receive. However, Customs does need evidence that the splitting of the shipment was done at the carrier's initiative. Accordingly, proposed § 141.57(j)(2) is amended in this final rule to provide that the importer must keep a copy of the originating bill of lading or air waybill or, in the absence of such document, any other supporting documentary evidence, such as a letter, from the carrier confirming that the splitting of the shipment was done by the carrier on its own initiative. An importer will have to insist that a carrier provide the necessary documentary evidence.

DENIAL OF INCREMENTAL RELEASE; QUOTA; OTHER GOODS—PROPOSED § 141.57(k)

Comment:

Proposed § 141.57(k)(1) wrongly excludes merchandise subject to quota and/or visa requirements from the incremental release procedure in proposed § 141.57(d)(2).

Customs Response:

Customs finds that quota and/or visa merchandise is of such a sensitive nature as to warrant its exclusion from the incremental release procedure of § 141.57(d)(2). Nevertheless, by precluding the use of the incremental release procedure in § 141.57(d)(2), Customs is not preventing importers of merchandise subject to quota or visa requirements from availing themselves of the benefits of the law. Under the procedure in § 141.57(d)(1), importers may still file a single entry under 19 U.S.C. 1484(j)(2) for a shipment of quota/visa merchandise which has been split by the incoming carrier. The procedure in § 141.57(d)(1) provides for the filing of a single entry after all portions of a split shipment have arrived. Under this procedure, the portions of the split shipment are not released incrementally, as each portion arrives, but are held until all

portions have arrived and the single entry covering those portions has been filed.

Comment:

With respect to proposed § 141.57(k)(2), a port director should not have the unfettered discretion to deny incremental release under proposed § 141.57(d)(2) as circumstances warrant. Also, the port director should not have the discretion to deny incremental release for purposes of examination, as provided in proposed § 141.57(f). In the alternative, an importer whose shipment is denied incremental release should be able to appeal such a denial.

Customs Response:

Customs believes that there may be circumstances under which the incremental release procedure is inappropriate and should not be allowed. In such circumstances, Customs has the authority to examine all of the merchandise included on an entry before allowing the release of any portion of the shipment.

In addition, Customs does not believe that an appeals process for a denial of incremental release is practicable, for two reasons. First, most of the portions of a split shipment will have arrived before an appeals process could be completed. Second, importers who are denied the use of incremental release under § 141.57(d)(2) for a particular split shipment are not deprived of the benefit conferred by the statute, that is, they may still file one entry for portions of a shipment which arrive separately in accordance with the release procedure set forth in § 141.57(d)(1).

ADDITIONAL CHANGE

In addition, proposed § 141.57(e) is clarified in this final rule to provide that the carrier responsible for splitting a shipment must notify any other obligated entities (such as another carrier or a freight forwarder) that have submitted electronic manifest information to Customs about the shipment that was split so that these parties can update their manifest information to Customs.

CONCLUSION

After careful consideration of the comments received and further review of the matter, Customs has concluded that the proposed amendments should be adopted with the modifications discussed above.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12886

This final rule implements the statutory law and engenders cost savings by reducing paperwork for importers, and by reducing the number of entries required for split shi ents. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor do these final regulations result in a "significant regulatory action" under E.O. 12866.

PAPERWORK REDUCTION ACT

The collections of information encompassed within this final rule have already been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515–0065 (Requirement to make entry unless specifically exempt; Requirement to file entry summary form); 1515–0167 (Statement processing and Automated Clearinghouse); 1515–0214 (General recordkeeping and record production requirements); and 1515–0001 (Transportation manifest; cargo declaration). This rule does not make any material change to the existing approved information collections. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

LIST OF SUBJECTS

19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 142

Computer technology, Customs duties and inspection, Entry of merchandise, Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

Parts 141 and 142, Customs Regulations (19 CFR parts 141 and 142), are amended as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * * * *

2. Section 141.51 is revised to read as follows:

§ 141.51 Quantity usually required to be in one entry.

All merchandise arriving on one conveyance and consigned to one consignee must be included on one entry, except as provided in § 141.52. In addition, a shipment of merchandise that arrives by separate conveyances at the same port of entry in multiple portions, as a split shipment, may be processed under a single entry, as prescribed in § 141.57.

3. Subpart D of part 141 is amended by adding a new § 141.57 to read as follows:

§ 141.57 Single entry for split shipments.

(a) *At election of importer of record.* At the election of the importer of record, Customs may process a split shipment, pursuant to section 484(j)(2), Tariff Act of 1930 (19 U.S.C. 1484(j)(2)), under a single entry, as prescribed under the procedures set forth in this section.

(b) *Split shipment defined.* A "split shipment", for purposes of this section, means a shipment:

(1) Which may be accommodated on a single conveyance, and which is delivered to and accepted by a carrier in the exporting country under one bill of lading or waybill, and is thus intended by the importer of record to arrive in the United States as a single shipment;

(2) Which is thereafter divided by the carrier, acting on its own, into different portions which are transported and consigned to the same party in the United States; and

(3) Of which the first portion and all succeeding portions arrive at the same port of entry in the United States, as listed in the original bill of lading or waybill; and all the succeeding portions arrive at the port of entry within 10 calendar days of the date of the first portion. If any portion of the shipment arrives at a different port, such portion must be transported in-bond to the port of destination where entry of the shipment is made.

(c) *Notification by importer of record.* The importer of record must notify Customs, in writing, that the shipment has been split at the carrier's initiative, that the remainder of the shipment will arrive by subsequent conveyance(s), and that an election is being made to file a single entry for all portions. The required notification must be given as soon as the importer of record becomes aware that the shipment has been split, but in all cases notification must be made before the entry summary is filed.

(d) *Entry or special permit for immediate delivery.* In order to make a single entry for a split shipment or obtain a special permit for the release of a split shipment under immediate delivery, an importer of record may follow the procedure prescribed in paragraph (d)(1) or (d)(2) of this section, as applicable.

(1) *Entry or special permit after arrival of entire shipment.* An importer of record may file an entry at such time as all portions of the split shipment have arrived at the port of entry (see paragraph (b)(3) of this section). In the alternative, again after the arrival of all portions of a split shipment at the port of entry, the importer of record may instead file a special permit for immediate delivery provided that the merchandise is eligible for such a permit under § 142.21(a)–(f) and (h) of this chapter. In either case, the importer of record must file Customs Form (CF) 3461 or CF 3461 alternate (CF 3461 ALT) as appropriate, or electronic equivalent, with Customs. The entry or special permit must indicate the total number of pieces in, as well as the total value of, the entire shipment as reflected on the invoice(s) covering the shipment.

(2) *Special permit prior to arrival of entire shipment.* As provided in § 142.21(g) of this chapter, an importer of record may also file a special permit for immediate delivery after the arrival of the first portion of a split shipment at the port of entry (see paragraph (b)(3) of this section), but before the arrival of the entire shipment at such port, thus qualifying the split shipment for incremental release, under paragraph (e) of

this section, as each portion of the shipment arrives at the port of entry (see paragraph (g)(2)(ii) of this section). In such case, a CF 3461 or CF 3461 ALT as appropriate, or electronic equivalent, must be filed with Customs. As each portion arrives at the port of entry, the importer of record must submit a copy of the CF 3461/CF 3461 ALT, adjusted to reflect the quantity of that particular portion relative to the quantity contained in the entire split shipment (see paragraph (b)(1) of this section); however, if both the carrier and the importer of record are automated, such adjustments may instead be made electronically through the Customs ACS (Automated Commercial System). In the event that an entry has been pre-filed with Customs (see § 142.2(b) of this chapter), notification to Customs by the importer of record that a single entry will be filed for shipments released incrementally will serve as a request that the pre-filed entry be converted to an application for a special permit for immediate delivery (see § 142.21(g) of this chapter). The special permit must indicate the total number of pieces in, as well as the total value of, the entire shipment as reflected on the invoice(s) covering the shipment. Customs may limit the release of each portion of the split shipment upon arrival at the port of entry, as permitted under this paragraph, due to the need to examine the merchandise in accordance with paragraph (f) of this section.

(e) *Release.* To secure the separate release upon arrival of each portion of a split shipment at the port of destination under paragraph (d)(2) of this section, the carrier responsible for initially splitting the shipment must present to Customs, either on a paper manifest or through an authorized electronic data interchange system, manifest information relating to the shipment that reflects exact information for each portion of the split shipment. The carrier responsible for splitting the shipment must notify other obligated entities (such as another carrier or freight forwarder) that have submitted electronic manifest information to Customs about the shipment that was split so that these parties can update their manifest information to Customs.

(f) *Examination.* Customs may require examination of any or all parts of the split shipment. For split shipments subject to the immediate delivery procedure of paragraph (d)(2) of this section, Customs reserves the right to deny incremental release should such an examination of the merchandise be necessary. The denial of incremental release does not preclude the use of the procedures specified in paragraph (d)(1) of this section.

(g) *Entry summary.* (1) *Entry.* For merchandise entered under paragraph (d)(1) of this section, the importer of record must file an entry summary within 10 working days from the time of entry.

(2) *Release for immediate delivery.* (i) *Release under paragraph (d)(1) of this section.* For merchandise released under a special permit for immediate delivery pursuant to paragraph (d)(1) of this section, the importer of record must file the entry summary, which serves as both the entry and the entry summary, within 10 working days after the mer-

chandise or any part of the merchandise is authorized for release under the special permit or, for quota class merchandise, within the quota period, whichever expires first (see § 142.23 of this chapter).

(ii) *Release under paragraph (d)(2) of this section.* For merchandise released under a special permit for immediate delivery pursuant to paragraph (d)(2) of this section, the importer of record must file the entry summary, which serves as both the entry and the entry summary, within 10 working days from the date of the first release of a portion of the split shipment. The filed entry summary must reflect all portions of the split shipment which have been released, to include quantity, value, correct classification and rate of duty. The entry summary cannot include any portions of the split shipment which have not been released.

(3) *Duty payment.* With the entry summary filed under paragraphs (g)(1) and (g)(2)(i) and (g)(2)(ii) of this section, the importer of record must attach estimated duties, taxes and fees applicable to the released merchandise. If the entry summary is filed electronically, the estimated duties, taxes and fees must be scheduled for payment at such time pursuant to the Automated Clearinghouse (see § 24.25 of this chapter).

(h) *Classification.* For purposes of section 484(j)(2), Tariff Act of 1930 (19 U.S.C. 1484(j)(2)), the merchandise comprising the separate portions of a split shipment included on one entry will be classified as though imported together.

(i) *Separate entry required.* (1) *Untimely arrival.* The importer of record must enter separately those portions of a split shipment that do not arrive at the port of entry within 10 calendar days of the portion that arrived there first (see paragraph (b)(3) of this section).

(2) *Different rates of duty for identically classified merchandise.* An importer of record will be required to file a separate entry for any portion of a split shipment if necessary to preclude the application of different rates of duty on a split shipment entry for merchandise that is classifiable under the same subheading of the Harmonized Tariff Schedule of the United States (HTSUS).

(j) *Requirement of importer of record to review entry and maintain evidence substantiating splitting of shipment.* (1) *Review of entry.* The importer of record will be responsible for reviewing the total manifested quantity shown on the CF 3461/CF 3461 ALT, or electronic equivalent, in relation to all portions of the split shipment that arrived at the port of entry under paragraph (b)(3) of this section within the specified 10 calendar day period. At the conclusion of the specified 10 calendar day period, the importer of record must make any adjustments necessary to reflect the actual amount, value, correct classification and rate of duty of the merchandise that was released incrementally under the split shipment procedures. If all portions of the split shipment do not arrive within the required 10 calendar day period, the importer of record must file an additional entry or entries as appropriate to cover any remaining portions of the split shipment that subsequently arrive (see paragraph (i)(1) of this section).

(2) *Evidence for splitting of shipment; recordkeeping*. The importer of record must maintain sufficient documentary evidence to substantiate that the splitting of the shipment was done by the carrier acting on its own, and not at the request of the foreign shipper and/or the importer of record. This documentation should include a copy of the originating bill of lading or waybill under which the shipment was delivered to the carrier in the country of exportation or other supporting documentary evidence, such as a letter from the carrier confirming that the splitting of the shipment was done by the carrier on its own initiative. This documentary evidence as well as all other necessary records received or generated by or on behalf of the importer of record under this section must be maintained and produced, if requested, in accordance with part 163 of this chapter.

(k) *Single entry limited; exclusions from single entry under incremental release procedure*.

(1) *Quota/visa merchandise*. Merchandise subject to quota and/or visa requirements is excluded from incremental release under the immediate delivery procedure set forth in paragraph (d)(2) of this section and § 142.21(g) of this chapter. Additionally, if by splitting a shipment any portion of it is subject to quota, no portion of the split shipment may be released incrementally.

(2) *Other merchandise*. In addition, the port director may deny the use of the incremental release procedure set forth in paragraph (d)(2) of this section and § 142.21(g) of this chapter, as circumstances warrant.

(3) *Limited single entry available*. For merchandise described in paragraphs (k)(1) and (k)(2) of this section, that is excluded from the immediate delivery procedure of paragraph (d)(2) of this section and § 142.21(g) of this chapter, the importer of record may still file a single entry or special permit for immediate delivery under paragraph (d)(1) of this section covering the entire split shipment of such merchandise following, and to the extent of, its arrival within the required 10 calendar day period.

PART 142—ENTRY PROCESS

1. The authority citation for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 142.21 is amended as follows:

a. By removing the second sentence in paragraph (e)(1) and adding in its place two new sentences;

b. By removing the second sentence in paragraph (e)(2) and adding in its place two new sentences;

c. By redesignating paragraph (g) as paragraph (h) and adding a new paragraph (g); and

d. By revising newly redesignated paragraph (h).

The additions and revision read as follows:

§ 142.21 Merchandise eligible for special permit for immediate delivery.

* * * * * * *

(e) *Quota-class merchandise.* (1) *Tariff rate.* * * * However, merchandise subject to a tariff-rate quota may not be incrementally released under a special permit for immediate delivery as provided in paragraph (g) of this section. Where a special permit is authorized, an entry summary will be properly presented pursuant to § 132.1 of this chapter within the time specified in § 142.23, or within the quota period, whichever expires first. * * *

(2) *Absolute.* * * * However, merchandise subject to an absolute quota under this paragraph may not be incrementally released under a special permit for immediate delivery as provided in paragraph (g) of this section. Where a special permit is authorized, a proper entry summary must be presented for merchandise so released within the time specified in § 142.23, or within the quota period, whichever expires first. * * *

* * * * * * *

(g) *Incremental release of split shipments.* Merchandise subject to § 141.57(d)(2) of this chapter, which is purchased and delivered to the carrier as a single shipment, but which is shipped by the carrier in separate portions to the same port of entry as provided in § 141.57(b)(3), may be released incrementally under a special permit. Incremental release means releasing each portion of such shipments separately as they arrive.

(h) *When authorized by Headquarters.* Headquarters may authorize the release of merchandise under the immediate delivery procedure in circumstances other than those described in paragraphs (a), (b), (c), (d), (e), (f) and (g) of this section provided a bond on Customs Form 301 containing the bond conditions set forth in § 113.62 of this chapter is on file.

3. Section 142.22 is amended by removing the first sentence of paragraph (a) and adding in its place two sentences to read as follows:

§ 142.22 Application for special permit for immediate delivery.

(a) *Form.* An application for a special permit for immediate delivery will be made on Customs Form 3461, Form 3461 ALT, or its electronic equivalent, supported by the documentation provided for in § 142.3. A commercial invoice will not be required, except for merchandise released under the provisions of 19 U.S.C. 1484(j). * * *

* * * * * * *

ROBERT C. BONNER,
Commissioner of Customs.

Approved: February 19, 2003.
TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, February 25, 2003 (68 FR 8713)]

U.S. Customs Service

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 1–2003)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of January 2002. The last notice was published in the CUSTOMS BULLETIN on February 5, 2003.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Intellectual Property Rights Branch, (202) 572–8710.

Dated: February 20, 2003.

JOANNE ROMAN STUMP,
Chief,
Intellectual Property Rights Branch.

The list of recordations follow:

02/11/2003 U.S. CUSTOMS SERVICE PAGE 1
07:55:10 IPR RECORDATIONS ADDED IN JANUARY 2003 DETAIL

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
COP0300001	20030103	20230103	CAN BADGE GOOD! PRODUCT PACKAGING	BANDAI CO., LTD.	N
COP0300002	20030103	20230103	ZENWORKS FOR DESKTOPS 3.2	NOVELL, INC.	N
COP0300003	20030117	20230117	THE LORD OF THE RINGS, THE TWO TOWERS	NEW LINE PRODUCTIONS INC.	N
SUBTOTAL RECORDATION TYPE			3		
TMK0300001	20030102	20040913	NAVITAR	NAVITAR INC.	N
TMK0300002	20030103	20120723	AVANADE/SYSTEMS.SOLUTIONS.SUCCESS/	AVANADE INC.	N
TMK0300003	20030103	20111225	AVANADE	AVANADE INC.	N
TMK0300004	20030103	20100801	PIKACHU	NINTENDO OF AMERICA INC.	N
TMK0300005	20030107	20120114	KONICA	KONICA CORPORATION	N
TMK0300006	20030108	20120917	DESIGN (BOTTLE)	FRATELLI DI VINI LLC	N
TMK0300007	20030108	20120824	MOMO (STYLIZED)	BREED TECHNOLOGIES, INC.	N
TMK0300008	20030116	20120528	DESIGN	MAJOR LEAGUE BASEBALL PROPERTIES	N
TMK0300009	20030116	20111113	D-BACKS	AZPB LIMITED PARTNERSHIP	N
TMK0300010	20030116	20120205	DESIGN (STYLIZED D)	DETROIT TIGERS, INC.	N
TMK0300011	20030116	20101030	MAJOR LEAGUE BASEBALL	MAJOR LEAGUE BASEBALL PROPERTIES	N
TMK0300012	20030117	20061227	STYLIZED DESIGN OF A BAT INSIDE TWO CONCENTRIC CIRCLES	BACARDI & COMPANY LTD.	N
TMK0300013	20030117	20110904	DEWAR'S	BACARDI & COMPANY LTD.	N
TMK0300014	20030117	20100321	DESIGN ICON	CALIFORNIA BOARD SPORTS INC.	N
TMK0300015	20030117	20080721	OSIRIS	CALIFORNIA BOARD SPORTS INC.	N
TMK0300016	20030117	20120512	ANGELINA	VIDA ENTERPRISE CORPORATION	N
TMK0300017	20030117	20110710	ANGELINA	VIDA ENTERPRISE CORPORATION	N
TMK0300018	20030127	20120205	C (STYLIZED)	THE CINCINNATI REDS, LLC	N
TMK0300019	20030127	20120723	ALL-STAR GAME	OFFICE OF THE COMMISSIONER	N
TMK0300020	20030127	20110604	ANGELS	ANAHEIM ANGELS L.P.	N
TMK0300021	20030127	20050822	COLORADO ROCKIES	COLORADO ROCKIES BASEBALL CLUB	N
TMK0300022	20030127	20110430	DODGERS	LOS ANGELES DODGERS, INC.	N
TMK0300023	20030127	20060706	CUBS & DESIGN	CHICAGO NATIONAL LEAGUE BALL	N
TMK0300024	20030127	20090926	SD (STYLIZED)	PADRES L.P.	N
TMK0300025	20030127	20120708	DR. PEPPER	DR. PEPPER/SEVEN UP, INC.	N
TMK0300026	20030127	20071201	SANTA FE SADDLERY AND DESIGN	INDIAN NATION LEATHER COMPANY	Y
TMK0300027	20030127	20070114	ASTROJAX	NEW TOY CLASSICS	N
TMK0300028	20030128	20120219	ISABELLA FIORE	ISABELLA FIORE, LLC.	N
TMK0300029	20030128	20041011	MARIA ROSA	VIDA ENTERPRISE CORPORATION	N
TMK0300030	20030129	20050815	LUXATEMP	FOREMOST DENTAL LLC.	N
TMK0300031	20030130	20110320	XOXO	XOXO CLOTHING COMPANY	N
TMK0300032	20030130	20090810	XOXO	XOXO CLOTHING CO.,INC.	N
TMK0300033	20030130	20070930	XOXO	XOXO CLOTHING CO.,INC.	N
TMK0300034	20030130	20061022	XOXO	XOXO CLOTHING CO., INC.	N
TMK0300035	20030130	20110904	XOXO IN AMERICA AND ABROAD AND DESIGN	XOXO CLOTHING CO.,INC.	N
TMK0300036	20030130	20070311	XOXO IN AMERICA AND ABROAD AND DESIGN	XOXO CLOTHING CO.,INC.	N
TMK0300037	20030130	20091209	SUPER BOWL	NATIONAL FOOTBALL LEAGUE	N
TMK0300038	20030130	20070111	NFL SHIELD	NATIONAL FOOTBALL LEAGUE	N
TMK0300039	20030131	20110605	XOXO	XOXO CLOTHING CO., INC.	N
SUBTOTAL RECORDATION TYPE			39		
TNM0300001	20030107	99999999	ORTHOTEC	ORTHOTEC, L.L.C.	N
SUBTOTAL RECORDATION TYPE			1		
TOTAL RECORDATIONS ADDED THIS MONTH			43		

ANNOUNCEMENT OF CHANGES TO THE ELIGIBILITY REQUIREMENTS AND APPLICATION PROCESS FOR PARTICIPATION IN REMOTE LOCATION FILING PROTOTYPE TWO

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces two changes to Remote Location Filing Prototype Two. One change provides that line release entries are no longer permitted under this prototype. The other change simplifies the application process for participation in the prototype to a one-step procedure that will consolidate information collection and expedite application processing at Customs Headquarters. Current RLF filers do not need to re-apply to Customs Headquarters to continue participation in RLF Prototype Two, nor will they be required to submit additional port applications.

DATES: The changes to Customs second prototype of the Remote Location Filing program will go into effect February 25, 2003. Comments concerning these changes, or any other aspect of RLF, may be submitted to Customs at any time. Applications for participation in RLF Prototype Two will be accepted throughout the duration of the test program.

ADDRESSES: Written comments and applications to participate in the prototype should be addressed to the Remote Filing Team, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Room 5.2–B, Washington, D.C. 20229. Comments may also be submitted via email to *Lisa.k.santana@customs.treas.gov.*

FOR FURTHER INFORMATION CONTACT: For systems or automation issues: Eloisa Calafell (305) 869–2780 or Jackie Jegels (301) 893–6717. For operational or policy issues: Lisa K. Santana at (202) 927–4342 or via email at *Lisa.k.santana@customs.treas.gov.*

SUPPLEMENTARY INFORMATION:

BACKGROUND

RLF Authorized by the National Customs Automation Program (NCAP)

Title VI of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subpart B of Title VI of the Act concerns the National Customs Automation Program (NCAP), an electronic system for the processing of commercial imports. Within subpart B, section 631 of the Act added section 414 (19 U.S.C. 1414), which provides for Remote Location Filing (RLF), to the Tariff Act of 1930, as amended. RLF permits an eligible NCAP participant to elect to file electronically a formal or informal consumption entry with Customs from a remote location within the Customs territo-

ry of the United States other than the port of arrival, or from within the port of arrival with a requested designated examination site outside the port of arrival.

RLF Prototype Two

In accordance with § 101.9(b) of the Customs Regulations (19 CFR 101.9(b)), Customs has developed and tested two RLF prototypes.

RLF Prototype Two commenced on January 1, 1997. *See* document published in the Federal Register (61 FR 60749) on November 29, 1996. On December 7, 1998, Customs announced in the Federal Register (63 FR 67511) that Prototype Two would remain in effect until Customs concluded the prototype by notice in the Federal Register. On July 6, 2001, Customs announced in the Federal Register (66 FR 35693) changes to the eligibility requirements for participation in RLF Prototype Two which mandated that customs brokers hold a national permit. That notice also announced that the provisions of part 111 of the Customs Regulations (which set forth the regulations providing for the licensing of and granting of permits to customs brokers) were applicable to customs brokers participating in the RLF prototype. The July 6, 2001, document noted that all of the other RLF Prototype Two terms and conditions set forth in the December 7, 1998 document remained in effect.

Changes to RLF Prototype Two

Since the inception of RLF Prototype Two, there have been significant changes made to the RLF application process, as well as to the prototype's eligibility requirements. As a result, much of the information contained in previous Federal Register notices regarding the application process, participant selection, and eligibility requirements needs to be updated or is now obsolete. For these reasons, this notice contains a comprehensive and updated list of current RLF eligibility requirements and a description of the new one-step application process. Therefore, information contained in this notice regarding these subject areas supercedes the information set forth in the sections entitled "Eligibility Criteria," Prototype Two Applications," and "Basis for Participant Selection" in the above-referenced Federal Register notices. All of the other RLF Prototype Two terms and conditions set forth in the above-referenced Federal Register notices remain in effect, except those explicitly changed by this document and described below.

I. No Line Release Entries Permitted Under RLF Prototype Two

RLF participants may not file using paper invoices or line release for RLF transactions. This prohibition is necessary to reflect the fact that RLF participants must possess a national permit and line release programs require a local permit.

II. RLF Prototype Two Eligibility Criteria

To be eligible to participate in RLF Prototype Two, a filer must have proven capability to provide electronically, on an entry-by-entry basis,

the following: entry; entry summary; invoice information using the Electronic Invoice Program (EIP); and the payment of duties, fees, and taxes through the Automated Clearinghouse (ACH). *See* 19 U.S.C. 1414(a)(2). EIP includes modules of the Automated Broker Interface (ABI) that allow entry filers to electronically transmit detailed entry data and includes Automated Invoice Interface (AII) and Electronic Data Interchange for Administration, Commerce and Transportation (EDIFACT). In addition, the following requirements and conditions apply:

1. RLF participants must be operational on the ABI (*see* 19 CFR part 143, subpart A);
2. RLF participants must be operational on the ACH 30 days before applying for RLF (*see* 19 CFR 24.25);
3. RLF participants must be operational on the EIP prior to applying for RLF;
4. RLF participants must possess a National Permit (*see* 19 CFR 111.19(f));
5. The remote Customs location(s) to which a prospective RLF participant wishes to transmit RLF information must have received EIP/RLF training. A current listing of RLF-trained locations, as well as other RLF information and updates, is available on the Customs Electronic Bulletin Board (CEBB), the Customs Administrative Message System (CAMS), and on the Customs Internet web site at *www.customs.gov;*
6. RLF participants must maintain a continuous bond which meets or exceeds the national guidelines for bond sufficiency;
7. Only entry type 01 (consumption) and entry type 11 (informal) will be accepted for RLF;
8. Cargo release must be certified from the entry summary transaction data (EI);
9. RLF participants may not file using paper invoices or line release for RLF transactions;

(Note: EIP participants will be allowed to file Immediate Delivery releases for direct arrival road and rail freight at the land border using paper invoices under Line Release, Border Cargo Selectivity (BCS), or Cargo Selectivity (CS), in accordance with 19 CFR 142.21(a).)

10. Cargo that has been moved in-bond is not eligible for RLF but may be eligible for clearance under EIP; and
11. RLF participants must use other government agency (OGA) interfaces where available. It is the filer's responsibility to ensure that all OGA requirements are met for each entry filed under RLF. If an electronic interface is not available, contact your local RLF coordinator for possible alternative filing options.

In addition to the eligibility requirements described above, all RLF participants are reminded of their responsibility to provide accurate information to Customs, and of their responsibility to adhere to all laws, regulations, rules, restrictions and eligibility criteria that pertain to this program. Any RLF participant who violates any of the above conditions

will be subject to all penalties available under the law including possible suspension from the prototype.

Participants are further reminded that participation in RLF Prototype Two is not confidential. Lists of approved participants will be made available to the public.

RLF Prototype Two Application Process

Applications for participation in RLF Prototype Two will be accepted on an ongoing basis and should be submitted to the Remote Filing Team, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Room 5.2B, Washington, D.C. 20229. Applications must contain the following information:

1. Filer name, point of contact, address, filer code and IRS #;
2. Site(s) from which RLF transmission originates (include port code);
3. Name of port(s) (including port code) to which RLF electronic filings will be transmitted; and
4. A sample of 5 entries filed using the Automated Invoice Interface (AII)/EIP, of varying complexity, that include: multiple lines, multiple invoices and an adjustment to the entered value (Delivered Duty Paid (DDP) and Cost, Insurance and Freight (CIF)).

After an application has been reviewed and evaluated, the applicant will receive an approval or denial letter from the Remote Filing Team, Customs Headquarters. An applicant will be permitted to begin filing entries to a remote location upon receipt of a letter from Customs granting approval to participate in RLF. If an approved RLF participant seeks to add additional ports or importers, they must notify their ABI client representative or the Headquarters coordinator for profile updates.

Dated: February 13, 2003.

JAYSON P. AHERN,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, February 25, 2003 (68 FR 8812)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, February 26, 2003.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

MICHAEL T. SCHMITZ,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF BATH BUCKET GIFT SETS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of bath bucket gift sets.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking one ruling pertaining to the tariff classification of bath bucket gift sets under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before April 11, 2003.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Holly Files, General Classification Branch (202) 572–8866.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility.** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke New York Ruling Letter (NY) I83983 pertaining to the tariff classification of bath bucket gift sets. Although in this notice Customs is specifically referring to the aforementioned ruling, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No additional rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or to the importer's or Customs' previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of the proposed action.

In NY I83983, dated August 6, 2002, set forth as Attachment A to this document, Customs classified certain bath bucket gift sets by their separate components in various subheadings.

It is now Customs position that the bath bucket gift sets are classifiable as GRI 3(b) sets. The essential character of the sets is defined by their bubble bath component. Thus, the sets are classified in subheading 3307.30.50, HTSUS, as: "Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: Perfumed bath salts and other bath preparations: Other. " Proposed HQ 966046 revoking NY I83983 is set forth as Attachment B.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY I83983 and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analysis set forth in proposed HQ 966046. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action, we will give consideration to any written comments timely received.

Dated: February 21, 2003.

JAMES A. SEAL,
(for Myles B. Harmon, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, August 6, 2002.

CLA-2-33:RR:NC:2:240 I83983
Category: Classification
Tariff No. 3307.30.5000, 3401.11.5000,
3924.90.5500, 9503.49.0000, and 9503.90.0080

MS. GRACIELA DEALCON
WAL*MART STORES, INC.
702 Southwest 8th Street
Bentonville, AR 72716-8023

Re: The tariff classification of Bob the Builder Bath Bucket Gift Set and Clifford the Big Red Dog Bath Bucket Gift Set from China.

DEAR MS. DEALCON:

In your letter dated July 2, 2002, you requested a tariff classification ruling. A sample of Bob the Builder Bath Bucket Gift Set, Item No. BL 258 and Clifford the Big Red Dog Bath Bucket Gift Set, Item No. CF 154, was submitted with your inquiry and are being returned as requested.

The gift sets each contain a collection of bath products. Bob the Builder Bath Bucket Gift Set contains an 8.5 oz. bottle of bubble bath, a hammer shaped sponge, 2 soap crayons and a netting sponge. The bubble bath and netting sponge both have toy toppers. The bubble bath topper, composed of plastic, depicts a toy bulldozer truck. The netting sponge topper portrays the head of Bob the Builder. It is composed of plastic and is permanently attached to the sponge. Clifford the Big Red Dog Bath Bucket Gift Set contains an 8.5 oz. bottle of bubble bath, a dog bone shaped sponge, 2 soap crayons and a netting sponge. The bubble bath and netting sponge both have toy toppers. The bubble bath topper, composed of plastic, portrays the head of Clifford the Big Red Dog. The netting sponge topper is a detachable plastic toy figurine portraying Clifford the Big Red Dog. The articles are packed together and marketed as sets for retail sale in plastic buckets. The buckets, measuring approximately 5½ inches high by 6½ inches in diameter, have plastic handles for carrying.

Although marketed as sets, the buckets are not a kind normally used for packing such items. For Customs tariff purposes, they are not considered sets and each item will be classified separately.

The applicable subheading for bubble bath will be 3307.30.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included: Perfumed bath salts and other bath preparations: Other * * *. The rate of duty will be 4.9 percent ad valorem.

The applicable subheading for soap crayons will be 3401.11.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, molded pieces or shapes, whether or not containing soap; paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent: For toilet use (including medicated products): Other * * *. The rate of duty will be free.

The applicable subheading for the netting sponges, the buckets and the hammer and dog bone shaped sponges will be 3924.90.5500, Harmonized Tariff Schedule of the United States (HTS), which provides for Tableware, kitchenware, other household articles and toilet articles, of plastics: Other: Other * * *. The rate of duty will be 3.4 percent ad valorem.

The applicable subheading for the netting sponge topper portraying Clifford the Big Red Dog toy figurine will be 9503.49.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Toys representing animals or non-human creatures (for example, robots and monsters) and parts and accessories thereof: Other * * *. The rate of duty will be free.

The applicable subheading for the bubble bath toppers depicting a toy bulldozer truck and the head portraying Clifford the Big Red Dog will be 9503.90.0080, Harmonized Tariff Schedule of the United States (HTS), which provides for Other toys; reduced-sized ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other: Other * * *. The rate of duty is free.

Perfumery, cosmetic and toiletry products are subject to the requirements of the Food and Drug Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stephanie Joseph at 646–733–3268.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 21, 2003.

CLA–2 RR:CR:GC 966046 HEF
Category: Classification
Tariff No. 3307.30.50

MR. LARRY ORDET
SANDLER, TRAVIS & ROSENBERG, P. A.
The Waterford
5200 Blue Lagoon Drive
Miami, FL 33126–2022

Re: Revocation of NY I83983; "Bob the Builder" and "Clifford the Big Red Dog" Bath Bucket Gift Sets.

DEAR MR. ORDET:

This is in response to your letter dated November 14, 2002, requesting reconsideration of New York Ruling Letter (NY) I83983, issued to you on August 6, 2002, on behalf of Wal-Mart Stores, Inc., which classified the components of the "Bob the Builder" and the "Clifford the Big Red Dog" Bath Bucket Gift Sets separately under the Harmonized Tariff Schedule of the United States (HTSUS). A sample was submitted. Consideration was given to submissions made on November 14, 2002, January 30, 2003, and January 31, 2003, as well as arguments presented in a teleconference held on January 27, 2003. We have reconsidered the classification of the merchandise at issue and have determined that NY I83983 is incorrect.

Facts:

The gift sets each contain a collection of bath products. "Bob the Builder" Bath Bucket Gift Set contains an 8.5 oz. bottle of bubble bath, a hammer shaped sponge, two soap crayons and a netting sponge. The bubble bath and netting sponge both have roto-molded toy toppers. The bubble bath topper, composed of plastic, depicts a toy bulldozer truck. The netting sponge topper portrays the head of Bob the Builder. It is composed of plastic and is permanently attached to the sponge. "Clifford the Big Red Dog" Bath Bucket Gift Set contains an 8.5 oz. bottle of bubble bath, a dog bone shaped sponge, two soap crayons and a netting sponge. The bubble bath and netting sponge both have roto-molded toy toppers. The bubble bath topper, composed of plastic, portrays the head of Clifford the Big Red Dog, and the netting sponge has a Clifford figure attached. These articles are packed together and sold at retail in plastic buckets. The buckets measure approximately 5 ½ inches high by 6 ½ inches in diameter and have plastic handles for carrying. The buckets have stickers associating the containers with the featured character. Each bucket and its contents are wrapped in a clear plastic.

Issue:

Whether the bath gift sets constitute goods put up in sets for retail sale or whether the components are separately classifiable?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
3307.30	Perfumed bath salts and other bath preparations:
3307.30.50	Other.
* * * * * * *	
3401	Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, molded pieces or shapes, whether or not containing soap; organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap; paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent:
	Soap and organic surface-active products and preparations, in the form of bars, cakes, molded pieces or shapes, and paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent:
3401.11	For toilet use (including medicated products):
3401.11.50	Other.
* * * * * * *	
9503	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.70.00	Other toys, put up in sets or outfits, and parts and accessories thereof.
* * * * * * *	

In your view, the subject merchandise should be classified as toy sets in heading 9503 under a GRI 1 analysis. The subject merchandise does not consist of merely one article, but contains several distinct articles that, when considered individually, cannot be construed as toys. The ENs to heading 9503 provide that, "collections of articles, the individual items of which if presented separately would be classified in other headings in the Nomenclature, are classified in this Chapter when they are put up in a form clearly indicating their use as toys (e.g. instructional toys such as chemistry, sewing, etc., sets)." In contrast to GRI 3(b) sets, the articles need not meet a particular need or carry out a specific activity. It has been Customs position that articles which normally would be classified elsewhere in the HTSUS may be classified as toys when put up together so that they are designed and used principally for amusement. See Additional U.S. Rule of Interpretation 1(a), HTSUS. See also Headquarters Ruling Letter (HQ) 965295, dated September 11, 2002, holding that the amusement derived from "Paper Punch Art" activity kit is secondary to the work performed to create a decoration; HQ 959189, dated September 25, 1996, holding that the amusement derived from the "Create-a-Card Stencil Book" is secondary to its functional purpose of making decorations; and HQ 960420, dated July 25, 1997, holding that the amusement derived from "Color-Me Pals" is secondary to their functional purpose of coloring.

In the tariff context, "amuse" is mainly used in contrast to some utilitarian or functional quality and the focus is not how the toys are used, but whether they are designed to amuse. An examination of the contents of the bath gift sets shows that the merchandise is not designed to amuse, but rather, it functions as a means by which children can bathe. For example, while one may find drawing with chalk to be amusing in a colloquial sense, the chalk is not designed to amuse. The chalk is designed to put words on a blackboard or color a picture. That is its function, not amusement.

Next, you argue that the bath gift sets qualify as GRI 3(b) sets. In pertinent part, GRI 2(b) states that the classification of goods consisting of more than one material or substance shall be according to the principles of rule 3. The products under consideration consist of items classifiable under four different headings. Thus, GRI 3(a) is applicable, which directs, in pertinent part, that goods classifiable under two or more headings be classified under the heading which provides the most specific description of the good. However, all such headings are regarded as equally specific when each refers to only part of the items in either a composite good or a set put up for retail sale. Therefore, to determine whether the

article might be classified under one provision, we look to GRI 3(b), which states in pertinent part that:

> * * * goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

EN(X) to GRI 3(b) provides in pertinent part that:

> For the purposes of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:
>
> (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings. * * *;
>
> (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
>
> (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

In accordance with EN (X) to GRI 3(b), the products qualify as sets. They consist of at least two different articles which are classifiable in different headings. The products consist of items put up together to carry out the specific activity of making "bath time" more appealing to children, and all of the items can be used for the distraction of the child during the bath. Thus, the products minimize some of the negative associations children have with bathing.

The sets are intended to distract children while parents bathe them, as indicated by the warning on the bubble bath stating that this product should be used by children only under adult supervision. The soap crayons can be used to write on the walls of the tub. The hammer and the dog shaped sponges and netting sponges with toy toppers are designed not only to aid in cleaning but also distract the child while bathing. While buckets are generally not sold with bath sets, in this instance, the bucket forms an integral part of the children's bath set. The plastic bucket can be emptied and filled with water by the child, and the adult can use it to aid in rinsing the child. The bucket also organizes and stores the items. Thus, the items carry out the specific activity of making "bath time" more attractive to children. Finally, the product is ready for direct sale without repacking.

You contend that the essential character of the sets is embodied by the character toppers, as the "highlight" of the bath bucket gift set. Alternatively, you state that the soap crayons make up approximately thirty percent of the value of the set, and as such constitute the most valuable component. EN (VIII) to GRI 3(b) states "The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods."

Recently, there have been several decisions on "essential character" for purposes of GRI 3(b). These cases have looked primarily to the role of the constituent materials or components in relation to the use of the goods to determine essential character. See *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), affirmed, 119 F. 3rd 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 1245 (1997), rev'd 160 F.3d 710 (Fed. Cir. 1998), and *Vista International Packaging Co. v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995). See also *Pillowtex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), affirmed 171 F.3d 1370 (Fed. Cir. 1999).

We have determined that the essential character of the sets is imparted by the bubble bath. It is the item most prominently displayed in the sets and would be the reason most parents would consider buying one of the sets for their children. It unifies the sets by creating the atmosphere or setting for the bath time enjoyment. In essence, it creates the fundamental character of the sets and is the item that most associates the sets with bath time. The character toppers make the sets more attractive to children, but do not suggest the sets' purpose of making "bath" time more appealing. They are often found on children's bubble bath bottles. In this case, the two small bath crayons do not play a predominant role in the sets.

Thus, the "Bob the Builder" Bath Bucket Gift Set and the "Clifford the Big Red Dog" Bath Bucket Gift Set are properly classifiable as sets according to GRI 3(b) and their essential characters are determined by the bubble bath components. The merchandise is classified under subheading 3307.30.50, HTSUS.

Holding:

Pursuant to GRI 3(b), The "Bob the Builder" and "Clifford the Big Red Dog" Bath Bucket Gift Sets are classifiable under subheading 3307.30.50, which provides for pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic and toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: perfumed bath salts and other bath preparations: other.

Effect on Other Rulings:

NY I83983 is revoked.

JAMES A. SEAL,
(for Myles B. Harmon, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF MICROCRYSTALLINE CELLULOSE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of microcrystalline cellulose.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling concerning the tariff classification of microcrystalline cellulose under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation was published on January 15, 2003, in Volume 37, Number 3, of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after May 12, 2003.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 572–8784.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "in-

formed compliance" and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, Customs published a notice in the January 15, 2003, CUSTOMS BULLETIN, Volume 37, Number 3, proposing to revoke New York Ruling Letter (NY) H87232, dated January 31, 2002, and to revoke any treatment accorded to substantially identical merchandise. No comments were received in response to this notice.

In NY H87232, Customs ruled that a microcrystalline cellulose was classified in subheading 3913.90.20, HTSUS, the provision for "[n]atural polymers (for example, alginic acid) and modified natural polymers (for example, hardened proteins, chemical derivatives of natural rubber), not elsewhere specified or included, in primary forms: [o]ther: [p]olysaccharides and their derivatives."

It is now Customs position that this substance was not correctly classified in NY H87232 because it is more specifically provided for in subheading 3912.90.00, HTSUS, the provision for "[c]ellulose and its chemical derivatives, not elsewhere specified or included, in primary forms: [o]ther."

As stated in the proposed notice, this revocation will cover any rulings on this issue which may exist but have not been specifically identified. Any party, who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have ad-

vised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Customs, pursuant to section 625(c)(1), is revoking NY H87232 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 966069 set forth as the attachment to this notice. Additionally, pursuant to section 625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: February 24, 2003.

GERARD J. O'BRIEN JR.,
(for Myles B. Harmon, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 24, 2003.

CLA-2 RR:CR:GC 966069 AM
Category: Classification
Tariff No. 3912.90.00

MR. JOSEPH CHIVINI
AUSTIN CHEMICAL COMPANY INC.
1565 Barclay Blvd.
Buffalo Grove, IL 60089

Re: NY H87232 revoked; microcrystalline cellulose CAS 9004-34-6.

DEAR MR. CHIVINI:

This is in reference to New York Ruling Letter (NY) H87232 issued to you on January 31, 2002, by the Director, Customs National Commodity Specialist Division, concerning the classification, under the Harmonized Tariff Schedule of the United States, (HTSUS), of microcrystalline cellulose CAS 9004-34-6. We have had an opportunity to review this ruling and believe it is incorrect.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY H87232 was published on January 15, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 3. No comments were received in response to this notice.

Facts:

Cellulose and microcrystalline cellulose have the chemical formula $(C_6H_{10}O_5)n$ and are assigned CAS 9004-34-6. Cellulose and microcrystalline cellulose have the same absolute

density and solubility; neither is soluble in water. Microcrystalline cellulose is used in producing a pharmaceutical intermediate.

Customs Laboratory Report SJ20020074, dated January 30, 2002, analyzing a microcrystalline cellulose in another case, states, in pertinent part, the following: "[t]he sample, a white powder, is microcrystalline cellulose. The sample is a modified natural polymer of derivated polysaccharides."

Cellulose is "a natural carbohydrate high polymer (polysaccharide) consisting of anhydroglucose units joined by an oxygen linkage to form long molecular chains. * * * The degree of polymerization is from 1000 for wood pulp to 3500 for cotton fiber, giving a molecular weight from 160,000 to 560,000. Cellulose exists in three forms-α, ß and γ." *Hawley's Condensed Chemical Dictionary*, 12th Ed., pp. 236–7, Van Nostrand Reinhold Company, New York (1993). However, "the molecular weight of isolated cellulose is approximately 50,000." "Evaluation of the Health Aspects of Cellulose and Certain Cellulose Derivatives as Food Ingredients," Food and Drug Administration Report BF–78–7, November, 1974.

The instant cellulose has been prepared in a microcrystalline form. The process involves breaking up the network of microcrystals by acid hydrolysis and separating them by mechanical agitation. On the microscopic level, these substances are composed of colloidal microcrystals connected by molecular chains. Microcrystalline cellulose is defined as a highly purified particulate form of cellulose. *Id.* at 107, 784–5. Due to the decreased number of glucose monomers in the microcrystalline cellulose chain, the degree of polymerization of microcrystalline cellulose is lower than that of cellulose. Hence, the molecular weight of microcrystalline cellulose is approximately 24,000–57,000.

Issue:

What is the classification, under the HTSUS, of microcrystalline cellulose?

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS headings under consideration are as follows:

> 3912 Cellulose and its chemical derivatives, not elsewhere specified or included, in primary forms:
>
> 3913 Natural polymers (for example, alginic acid) and modified natural polymers (for example, hardened proteins, chemical derivatives of natural rubber), not elsewhere specified or included, in primary forms:

EN 39.12 states, in pertinent part, the following:

> (A) CELLULOSE
>
> Cellulose is a carbohydrate of high molecular weight, forming the solid structure of vegetable matter. It is contained in cotton in almost a pure state. Cellulose not elsewhere specified or included, in primary forms, falls in this heading.

Through the formation of microcrystalline cellulose, the molecular weight decreases. Although the ENs describe cellulose as a carbohydrate of high molecular weight, this statement does not preclude microcrystalline cellulose from being classified as such. Microcrystalline cellulose remains a carbohydrate with the same chemical formula as cellulose. Microcrystalline cellulose has a molecular weight within the range of isolated cellulose. Microcrystalline cellulose is known as a highly purified particulate form of cellulose within the technical literature noted above. As such, the product is more specifically

provided for in heading 3912, HTSUS, as cellulose than in heading 3913, HTSUS, as a natural polymer, not elsewhere specified or included.

Our determination is consistent with a recent decision on similar merchandise published in the *Compendium of Classification Opinions* on the Harmonized Commodity Description and Coding System where the classification of "Cellulose powder, microcrystalline, white, obtained from alpha cellulose by acid hydrolysis which breaks up the fibres, * * *" is classified in 3912.90 of the Harmonized Tariff Schedule (HTS). *See* Opinion No. 3912.90 of the WCO's *Compendium of Classification Opinions*, Amending Supplement No. 25 (January 2000). As we stated in T.D. 89–80, decisions in the *Compendium of Classification Opinions* should be treated in the same manner as the ENs, i.e., while neither legally binding nor dispositive, they provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. T.D. 89–80 further states that ENs and decisions in the *Compendium of Classification Opinions* "should receive considerable weight."

Holding:

Microcrystalline cellulose is classified in subheading 3912.90.00, HTSUS, the provision for "[c]ellulose and its chemical derivatives, not elsewhere specified or included, in primary forms: [o]ther."

Effect on Other Rulings:

NY H87232 is revoked.

In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

GERARD J. O'BRIEN, JR.,
(for Myles B. Harmon, Director,
Commercial Rulings Division.)

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE ELIGIBLITY OF A BEDDING SET TO RECEIVE PREFERENTIAL TARIFF TREATMENT PURSUANT TO THE NORTH AMERICAN FREE TRADE AGREEMENT

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to the eligibility of a comforter and a pillow sham of a bedding set, as well as the entire bedding set, to receive preferential tariff treatment pursuant to the North American Free Trade Agreement.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify one ruling letter relating to the eligibility of a comforter and a pillow sham of a bedding set, as well as the entire bedding set, to receive preferential tariff treatment pursuant to the North American Free Trade Agreement. Customs also proposes to revoke any treatment previously accorded by it to substantially identical

transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before April 11, 2003.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at: U.S. Customs Service, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: J. Steven Jarreau, Textiles Classification Branch: (202) 572–8817

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerged from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify one ruling letter relating to the eligibility of a comforter and a pillow sham of a bedding set, as well as, the entire bedding set to receive preferential tariff treatment pursuant to the North American Free Trade Agreement.

Although Customs refers in this notice to one New York Ruling Letter, this notice covers any rulings on substantially identical merchandise that may exist, but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a rul-

ing letter, an internal advice memorandum or decision or a protest review decision) on the merchandise subject to this notice, which is contrary to this notice, should advise Customs during this comment period. An importer's failure to advise Customs of a specific interpretative ruling or decision addressing substantially identical merchandise not identified in this notice, may raise issues of reasonable care on the part of the importer or its agent for importation of merchandise subsequent to the effective date of the final decision on this notice.

The Customs Service, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C.1625 (c)(2)), as amended by section 623 of Title VI, also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of an importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling issued to a third party to importations of the same or similar merchandise, or an importer's or Customs previous interpretation of the HTSUSA. Any person involved with a substantially identical transaction and asserting a claim of treatment should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions may raise issues of reasonable care on the part of the importer or its agent for importation of merchandise subsequent to the effective date of the final decision on this notice.

The Customs Service in New York Ruling Letter (NY) I80828 (May 10, 2002) concluded that a comforter and a pillow sham of a bedding set were not eligible to receive preferential tariff treatment pursuant to the North American Free Trade Agreement. The Customs Service determined in New York Ruling Letter I82808 that the comforter and the pillow sham, pursuant to General Note 12 (a)(i) of the Harmonized Tariff Schedule of the United States Annotated, were not goods that originated in the territory of a NAFTA Party and did not qualify to be marked as goods of Canada. Customs further concluded that although the merchandise should be classified as a set, the set was not eligible for the Special Column 1 "CA" NAFTA rate of duty. New York Ruling Letter I80828 is set forth as Attachment "A" to this document.

After reviewing that ruling, it is Customs determination that the ruling is in error and that the comforter and the pillow sham are goods that originate in the territory of a NAFTA Party and do qualify to be marked as goods of Canada. The "Bed in a Bag," consisting of the comforter, pillow sham, bed skirt, pillowcase, flat sheet and fitted sheet, classified as a set in subheading 9404.90.8522, Harmonized Tariff Schedule of the United States Annotated, is, therefore, entitled to the "Special" Column 1 "CA" NAFTA rate of duty. Proposed Headquarters Ruling Letter (HQ) 965986, modifying NY I80828, is set forth as Attachment "B" to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY I80828 and any other rulings not specifically identified, to reflect the eligibility of the comforter and the pillow sham, as well as the entire set, to

be entitled to preferential tariff treatment pursuant to the North American Free Trade Agreement. The legal analysis for this decision is set forth in proposed HQ 965986. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise and transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: February 21, 2003.

JOHN ELKINS,
(for Myles B. Harmon, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, May 10, 2002.

CLA–2–RR:NC:TA:349 I80828
Category: Classification

MR. RALPH SAUNDERS
DERINGER LOGISTICS CONSULTING GROUP
1 Lincoln Blvd., Suite 225
Rouses Point, NY 12979

Re: Classification, status under the North American Free Trade Agreement (NAFTA) and country of origin determination for a bedding set; 19 CFR 102.21(c)(1); wholly obtained or produced in a single country; 19 CFR 102.21(c)(2); tariff shift; 19 CFR 102.21(c)(4); most important assembly or manufacturing process; 19 CFR 102.21(d); sets; Article 509.

DEAR MR. SAUNDERS:

This is in reply to your letter dated April 17, 2002 requesting a classification, status under the NAFTA and country of origin determination for a bedding set which will be imported into the United States. This request is being made on behalf of C. S. Brooks Canada Inc.

Facts:

The subject merchandise consists of a bedding set which may also be referred to as a bed in a bag set. The submitted twin sized set consists of a comforter, bed skirt, pillow sham, pillowcase, flat sheet and fitted sheet. The comforter is filled with a polyester batting fabric and quilted through all three layers. The outer shell of the comforter, pillow sham and the skirt portion of the bed skirt will be made from either a 70 percent polyester and 30 percent cotton woven printed fabric or a 50 percent polyester and 50 percent cotton woven printed fabric. The bed skirt or bed ruffle is designed to hang over the edge of a box spring on three sides. The skirt has an approximately 13-inch drop. The platform section of the bed skirt is made from a spunbond nonwoven fabric. The back portion of the pillow sham features an overlapping flap closure and the edges are finished with a flange or picture frame effect.

The flat sheet, fitted sheet and pillowcase are made from 50 percent polyester and 50 percent cotton woven printed fabric. The pillowcase is folded and sewn leaving one end open. The fitted sheet is elasticized along the sides. The flat sheet is hemmed at the top and

bottom while the sides are selvage. The bedding or bed in a bag set will be packed for retail sale in a vinyl bag. The manufacturing operations are as follows:

Pakistan:

—polyester and cotton (70/30 or 50/50) fabric is woven.
—fabric may be bleached.
—rolls of greige or bleached fabric are shipped to Canada.

Canada:

—polyester batting fabric is made (this item may also be made in the United States).
—nonwoven fabric for platform section of bed skirt is formed.
—50/50 polyester and cotton fabric for the sheets and pillowcase is woven.
—70/30 and 50/50 fabrics are bleached (if needed), printed and finished.
—fabrics are cut, sewn, stuffed, quilted, etc., forming the various set components.
—comforter, bed skirt, sham, pillowcase and sheets are packed for retail sale and shipped.

Issue:

What are the classification, eligibility under NAFTA and country of origin of the subject merchandise?

Classification:

The bedding set meets the qualifications of "goods put up in sets for retail sale". The components of the sets consist of different articles which are, prima facie, classifiable in different headings. They are put up together to carry out the specific activity of furnishing a bed and they are packaged for sale directly to users without repacking. It is our opinion that the comforter is the component that gives the set its essential character.

Due to the fact that the shell of the comforter may be constructed from a 50/50 blend of fibers, it is classified using HTSUSA Section XI Note 2(A) and Subheading Note 2(A). Additional U.S. Rule of Interpretation 1(d) states that the principles of Section XI regarding mixtures of two or more textile materials shall apply to the classification of goods in any provision in which a textile material is named. The 50/50 blend comforter will be classified as if it consisted wholly of that one textile material which is covered by the heading which occurs last in numerical order among those which equally merit consideration. Even a slight change in the fiber content may result in a change of classification, as well as visa and quota requirements. The comforter may be subject to U.S. Customs laboratory analysis at the time of importation, and if the fabric is other than a 50/50 blend it may be reclassified by Customs at that time.

The applicable subheading for the submitted bedding set will be 9404.90.8522, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: other: other: quilts, eiderdowns, comforters and similar articles * * * with outer shell of man-made fibers. The general rate of duty will be 13.1 percent ad valorem.

The comforter, pillow sham, bed skirt, pillowcase and sheets fall within textile category designation 666. The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the U.S. Customs Service Textile Status Report, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

NAFTA Eligibility:

The bedding set undergoes processing operations in Canada and possibly the United States which are countries provided for under the North American Free Trade Agreement. The bedding set at issue will be eligible for the NAFTA preference if it qualifies to be marked as a good of Canada and if it is transformed in Canada so that the non-originating material undergoes a change in tariff classification described in subdivision (t) to General

Note 12, HTSUSA. For heading 9404, HTSUSA, subdivision (t), Chapter 94, rule 7, states that:

> A change to subheading 9404.90 from any other chapter, except from headings 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408 or 5512 through 5516.

When the 70/30 or 50/50 polyester and cotton woven fabric for the comforter shell leaves Pakistan, it is classified in heading 5513, HTSUSA. As fabrics of heading 5513, HTSUSA, are excepted from meeting the tariff change to subheading 9404.90, HTSUSA, the non-originating material from Pakistan does not undergo the requisite change in tariff classification. Accordingly, the merchandise is not eligible for the NAFTA preference.

However, the comforter may be subject to a reduced rate of duty based upon the Tariff Preference Levels (TPL) established in Section XI, HTSUSA, Additional U.S. Note 4(a), up to the annual quantities specified in subdivision (c) of Note 4. Goods of subheading 9404.90 that are cut and sewn or otherwise assembled from specific fabrics produced or obtained outside the territory of one of the NAFTA parties, are eligible for the preferential rate of duty. Upon completion of the required documentation and up to the specified annual quantities, the comforter which is partially made of fabric (subheading 5513.11) from Pakistan, cut and sewn in Canada may be eligible for the preferential rate of Free. As the comforter determines the classification of the set, the set receives the preferential duty rate.

Country of Origin—Law and Analysis:

On December 8, 1994, the President signed into law the Uruguay Round Agreements Act. Section 334 of that Act (codified at 19 U.S.C. 3592) provides new rules of origin for textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. On September 5, 1995, Customs published Section 102.21, Customs Regulations, in the Federal Register, implementing Section 334 (60 FR 46188). Thus, effective July 1, 1996, the country of origin of a textile or apparel product shall be determined by sequential application of the general rules set forth in paragraphs (c)(1) through (5) of Section 102.21.

Section 102.21(d) addresses the treatment of sets for country of origin purposes. Section 102.21(d) provides the following:

> Where a good classifiable in the HTSUS as a set includes one or more components that are textile or apparel products and a single country of origin for all of the components of the set cannot be determined under paragraph (c) of this section, the country of origin of each component of the set that is a textile or apparel product shall be determined separately under paragraph (c) of this section.

The classification of the subject bedding set, as per an essential character determination, is based on the comforter, however, per the terms of Section 102.21(d), one must determine whether or not a single country of origin exists for the entire set.

Paragraph (c)(1) states that "The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced." As the fitted sheet, flat sheet and pillowcase were wholly obtained or produced in a single country, that is, Canada, country of origin of the sheets and pillowcase is conferred in Canada. The comforter, bed skirt and shams are not wholly obtained or produced in a single country, territory or insular possession, and therefore paragraph (c)(1) of Section 102.21 is inapplicable for those items.

Paragraph (c)(2) states that "Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each of the foreign materials incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section:"

Paragraph (e) in pertinent part states that "The following rules shall apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section."

HTSUS	Tariff shift and/or other requirements
6301–6306	The country of origin of a good classifiable under heading 6301 through 6306 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric making process.

9404.90 The country of origin of a good classifiable under subheading 9404.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

As the fabrics comprising the comforter and bed skirt are formed in more than one country, Section 102.21(c)(2) is inapplicable for the comforter and bed skirt. The pillow sham is comprised of a fabric that is formed in a single country. Following the terms of the tariff shift requirement, the country of origin of the pillow sham is conferred in Pakistan where the fabric was woven.

Section 102.21(c)(3) states that, "Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) or (2) of this section:

(i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or

(ii) Except for goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled."

As the subject comforter and bed skirt are not knit and heading 6303 and subheading 9404.90, HTSUSA, are excepted from provision (ii), Section 102.21 (c)(3) is inapplicable.

Section 102.21 (c)(4) states, "Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1), (2) or (3) of this section, the country of origin of the good is the single country, territory or insular possession in which the most important assembly or manufacturing process occurred." In the case of the subject merchandise, the most important manufacturing process occurs at the time of fabric making. Basing the country of origin determination on the fabric making process as opposed to the assembly process carries out the clear intent of Section 334 as expressed in Section 334(b)(2) and Part 102.21(c)(3)(ii). In the case of the subject comforters, the fabric making process of the outer fabric shell constitutes the most important manufacturing process. The fabric making process of the skirt portion of the bed skirt constitutes the most important manufacturing process for the bed skirt. Accordingly, the fabric making process in Pakistan, where the fabric for the outer shell of the comforter and the skirt portion of the bed skirt are formed, constitutes the most important manufacturing process and the country of origin of the subject comforter and bed skirt is Pakistan.

Holding:

The country of origin of the pillowcase, flat sheet and fitted sheet is Canada. The country of origin of the comforter, bed skirt and pillow sham is Pakistan. Based upon international textile trade agreements these products of Pakistan are not subject to quota or visa requirements. Although the bedding set is not eligible for the NAFTA preference, it is eligible for the tariff preferential level assuming the tariff preferential level is available up to the annual quantity specified and provided the appropriate documents are submitted.

The holding set forth above applies only to the specific factual situation and merchandise identified in the ruling request. This position is clearly set forth in section 19 CFR 181.100(a)(2). This section states that a ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181). Should it be subsequently determined that the information furnished is not complete and does not comply with 19 CFR 181.100(a)(2), the ruling will be subject to modification or revocation. In the event there is a change in the facts previously furnished, this may affect the determination of country of origin. Accordingly, if there is any change in the facts submitted to Customs, it is recommended that a new ruling request be submitted.

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist John Hansen at 646–733–3043.

Should you wish to request an administrative review of this ruling, submit a copy of this ruling and all relevant facts and arguments within 30 days of the date of this letter, to the Director, Commercial Rulings Division, Headquarters, U.S. Customs Service, 1300 Pennsylvania Ave. N.W., Washington, D.C. 20229.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:TE 965986 jsj
Category: Classification
Tariff No. 9404.90.8522

MR. RALPH SAUNDERS
SENIOR TRADE ADVISOR
DERINGER LOGISTICS CONSULTING GROUP
1 Lincoln Blvd. Suite 225
Rouses Point, NY 12979

Re: Modification of NY I80828 (May 10, 2002); HQ 965739 (June 27, 2002); NAFTA Originating Goods; Self-Produced Material; Country of Origin; NAFTA Preference Override; CITA Quota/Visa Requirements.

DEAR MR. SAUNDERS:

The purpose of this correspondence is to respond to your request of October 8, 2002. The correspondence in issue requested, on the behalf of your client, C. S. Brooks Canada, Inc. (C. S. Brooks), modification of HQ 965739 (June 27, 2002).

The request for modification you submitted specifically advocates that this office reconsider its position concerning the eligibility of the comforter to receive preferential treatment pursuant to the North American Free Trade Agreement (NAFTA). The submission suggests that the comforter may be deemed a NAFTA originating good through the applicability of the Appendix to Part 181, section 4 (8), of Customs NAFTA Rules of Origin Regulations applicable to "self-produced material" and further suggests the applicability of the NAFTA preference override of 19 C.F.R. 102.19. The Customs Service, although not requested to do so, will apply the same analysis to the pillow sham, also determined in NY I80828 (May 10, 2002) to be a product of the country of Pakistan and ineligible for the NAFTA preferential rate of duty.

The Customs Service, subsequent to reviewing the submission on the behalf of C. S. Brooks, concludes that the comforter and the pillow sham are entitled to the "Special" Column 1 "CA" NAFTA rate of duty. Customs does not believe that HQ 965739 should be modified or revoked, but will modify NY I80828.

This ruling is being issued subsequent to the following: (1) A review of your submission dated October 8, 2002; (2) A telephone conversation with Ms. Gloria Columbe of your office conducted with a member of my staff on December 3, 2002; and (3) A review of NY I80828 and HQ 965739.

Facts:

The article in issue, as identified by C. S. Brooks, is a "Bed in a Bag." The "Bed in a Bag" bedding set consists of a twin sized comforter, bed skirt, pillow sham, pillowcase, flat sheet and fitted sheet.

The outer shell of the comforter, the pillow sham and the skirt portion of the bed skirt will be made of either a seventy (70) percent polyester and thirty (30) percent cotton woven, printed fabric or a fifty (50) percent polyester and fifty (50) percent cotton woven, printed fabric. The comforter is filled with a polyester batting fabric and quilted through all three layers. The back aspect of the pillow sham features an overlapping flap closure and the edges are finished with a flange or picture frame effect.

The bed skirt is designed to hang over the edge of a box spring on three sides. The skirt has an approximately thirteen (13) inch drop. The skirt aspect of the bed skirt will be made from either a seventy (70) percent polyester and thirty (30) percent cotton woven, printed fabric or a fifty (50) percent polyester and fifty (50) percent cotton woven, printed fabric. The platform aspect of the bed skirt will be made from spunbond nonwoven fabric.

The flat sheet, fitted sheet and pillowcase will be made from a fifty (50) percent polyester and fifty (50) percent cotton woven, printed fabric. The fitted sheet is elasticized along the sides. The flat sheet is hemmed at the top and bottom. The sides are selvage. The pillowcase is folded and sewn, leaving one end open.

The "Bed in a Bag" bedding set will be packaged for retail sale in a vinyl bag.

The manufacturing operations are:

Pakistan:

(1) The polyester and cotton fabric (70/30 or 50/50) is woven;
(2) The fabric may be bleached; and
(3) Rolls of greige or bleached fabric are exported from Pakistan to Canada.

Canada:

(1) The polyester batting fabric is made (this item may also be made in the United States);
(2) The nonwoven fabric for the platform section of the bed skirt is formed;
(3) The fifty (50) percent polyester and fifty (50) percent cotton fabric for the flat sheet, fitted sheet and pillowcase is woven;
(4) The seventy (70) percent polyester and thirty (30) percent cotton fabric and the fifty (50) percent polyester and fifty (50) percent cotton fabrics are bleached, if needed, printed and finished;
(5) The fabrics are cut, sewn, stuffed and quilted to form the set components; and
(6) The comforter, bed skirt, pillow sham, pillowcase, fitted sheet and flat sheet are packed for retail sale.

Issue:

Does the "Bed in a Bag" bedding set qualify to receive the "Special" Column 1 "CA" rate of duty pursuant to General Note 12 (a)(i) of the Harmonized Tariff Schedule of the United States Annotated as goods that originate in the territory of a NAFTA Party and that qualify to be marked as goods of Canada?

Law and Analysis:

The Customs Service in NY I80828 addressed the classification, eligibility for preferential treatment pursuant to the North American Free Trade Agreement and country of origin of the "Bed in a Bag" bedding set. New York Ruling Letter I80828, as it addresses the classification analysis of all the articles of the bedding set and the country of origin analysis of the fitted sheet, the flat sheet and the pillowcase, is authoritative and will not be modified or revoked with regard to these issues.

Customs, in HQ 965739, modified NY I80828 as it addressed the country of origin of the bed skirt. Headquarters Ruling Letter 965739, as it addresses the country of origin of the bed skirt, is authoritative and will not be modified or revoked in this ruling letter.

NAFTA Originating Goods

This ruling letter will initially address whether the comforter and the pillow sham qualify as "goods originating in the territory of a NAFTA party" pursuant to HTSUSA General Note 12 (b) and whether the comforter and the pillow sham may be marked as goods of Canada pursuant to 19 C.F.R. 102.19, the NAFTA preference override. The resolution of these issues in conjunction with the determinations of NY I80828 and HQ 965739 will establish whether the entire "Bed in a Bag" bedding set is eligible to receive the "Special" column 1 "CA" rate of duty.

General Note 12 (a)(i) of the HTSUSA addressing the North American Free Trade Agreement provides that "[g]oods that originate in the territory of a NAFTA party * * * and that qualify to be marked as goods of Canada" and that are "entered under a subheading for which a rate of duty appears in the 'Special' subcolumn followed by the symbol 'CA' in parentheses" are eligible for the "CA" rate of duty. General Note 12 (b) provides, in part, that goods imported into the customs territory of the United States will be eligible for NAFTA tariff treatment as "*goods originating in the territory of a NAFTA party*" only if:

(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States: or
(ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or
(B) the goods satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note.

Since neither the comforter nor the pillow sham were wholly obtained or produced in Canada, Mexico or the United States, the issue becomes whether they have been transformed in the territory of one of the NAFTA Parties as provided in GN 12 (b)(ii).

The comforter and pillow sham will be considered as having been "transformed" in the territory of a NAFTA Party if each non-originating material, in this instance the fabric, undergoes a change in tariff classification as described in subdivision (t). Subdivision (t) of GN 12, applicable to the comforter and pillow sham classified as a set in subheading 9404.90.8522, HTSUSA, provides, in pertinent part:

> A change to subheading 9404.90 from any other chapter, except from headings 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408 or 5512 through 5516. *See* GN 12 (t)/94.7.

The fabric used in the manufacture of the comforter and the pillow sham, of either polyester/cotton blend, is classifiable at the time of entry into Canada in heading 5513, HTSUS. Fabric classifiable in heading 5513, HTSUS, is excepted from the tariff shift requirement of GN 12 (t)/94.7. The comforter and pillow sham, therefore, do not initially meet the transformation requirement of GN 12 (b).

The importer, in this instance, may seek recourse to the Appendix to Part 181 of Customs NAFTA Rules of Origin Regulations, particularly section 4 (8) applicable to "self-produced material." Section 4 (8) provides, in pertinent part:

> For purposes of determining whether non-originating materials undergo an applicable change in tariff classification, a self-produced material may, at the choice of the producer of a good into which the *self-produced material* is incorporated, be considered as an originating material or non-originating material, as the case may be, used in the production of that good. (Emphasis added) 19 C.F.R. Part 181 Appendix section 4 (8).

"[S]elf-produced material," as defined in section 2 (1), is "a material that is produced by the producer of a good and used in the production of that good." 19 C.F.R. Part 181 Appendix section 2 (1).

C. S. Brooks, as the producer of the "Bed in a Bag" bedding set (the "good"), has the option, pursuant to Part 181 Appendix section 4 (8), of identifying the comforter shell, a transitional article in the production of the comforter, and the pillow sham (the "self-produced materials") as non-originating materials. The non-originating materials, through the election of this option, would be the comforter shell classifiable in heading 6307, HTSUS, and the pillow sham classifiable in heading 6304, HTSUS. Headings 6307 and 6304, HTSUS, are not excepted from the tariff shift rule of GN 12 (t)/94.7. The comforter shell and the pillow sham under this analysis meet the transformation requirement of GN 12 (b)(ii). *See generally* HQ 562498 (Nov. 13, 2002); HQ 965696 (Sept. 18, 2002); and HQ 965309 (Sept. 18, 2002).

The "Bed in a Bag" bedding set, pursuant to the analysis set forth above and in NY I80828, meets the initial requirement of GN 12 (a)(i) to qualify for the column 1 Special "CA" rate of duty. Each of the components of the set are goods that "originate" in the territory of a NAFTA Party.

Country of Origin

The second element of General Note 12 (a)(i) is that the goods "qualify to be marked as goods of Canada." The Customs Service in NY I80828 determined that the flat sheet, the fitted sheet and the pillowcase qualified to be marked as goods of Canada. Customs, in HQ 965739, reached the same determination for the bed skirt. This ruling letter will reconsider the country of origin of the comforter and the pillow sham.

The Uruguay Round Agreements Act, particularly section 334, codified at 19 U.S.C. 3592, sets forth the rules of origin for textile and apparel products. Customs, pursuant to the legislative authority extended to the Secretary of the Treasury, published regulations implementing the principles set forth by Congress.

Section 102.21 of Customs regulations establishes, with specifically delineated exceptions, that "this section shall control the determination of the country of origin of imported textile and apparel products for purposes of the Customs laws." 19 C.F.R. 102.21. Textile and apparel products that are encompassed within the scope of section 102.21 are any goods classifiable in Chapters 50 through 63 of the HTSUSA, as well as goods classifiable under other specifically enunciated subheadings, including subheadings 9404.90.80–95, HTSUS. *See* 19 C.F.R. 102.21 (b)(5).

The "Bed in a Bag" comforter and pillow sham are classifiable in subheading 9404.90.8522, HTSUSA, and heading 6304, HTSUS, respectively. They are, therefore, textile and apparel products subject to the rules of origin in 19 C.F.R. 102.21. *See* 19 C.F.R. 102.21 (b)(5).

Although the "Bed in a Bag" bedding set is classified as a "set" pursuant to General Rule of Interpretation 3 (b) and further classified in subheading 9404.90.8522, HTSUSA, based on the essential character provided by the comforter, 19 C.F.R. 102.21 (d) addressing the treatment of sets mandates that the origin of each item in the set be determined separately. Section 102.21 (d) specifically provides that where one or more components of a set are textile or apparel products and section 102.21 (c) does not provide for a single country of origin, "each component of the set that is a textile or apparel product shall be determined separately under paragraph (c)." 19 C.F.R. 102.21 (d). The country of origin of the comforter and the pillow sham will, therefore, be determined separately.

The country of origin of textile and apparel products is determined by the sequential application of paragraphs (c)(1) through (c)(5) of section 102.21. Paragraph (c)(1) provides that "[t]he country of origin of a textile or apparel product is the single country, territory or insular possession in which the good was wholly obtained or produced." Since the fabric is formed in Pakistan and cut, sewn, stuffed and quilted in Canada, the origin of the comforter and pillow sham cannot be determined by reference to paragraph (c)(1).

Paragraph (c)(2) of section 102.21 provides that where the country of origin cannot be determined according to paragraph (c)(1), resort should next be to paragraph (c)(2). The country of origin, according to paragraph (c)(2), is "the single country, territory or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e)" of section 102.21. Paragraph (e)(1), as applicable to the instant determinations, establishes tariff shift rules that provide:

The Comforter:

HTSUS	Tariff Shift and/or Other Requirement
9404.90	Except for goods of subheading 9404.90 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable under subheading 9404.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

The Pillow Sham:

HTSUS	Tariff Shift and/or Other Requirement
6301–6306	Except for goods of heading 6302 through 6304 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable under heading 6301 through 6306 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

The tariff shift requirements of paragraph (e)(1) of section 102.21 for both the comforter classifiable in subheading 9404.90, HTSUS, and the pillow sham classifiable in heading 6304, HTSUS, directs Customs to section 102.21 (e)(2). Paragraph (e)(2) provides, in pertinent part:

> For goods of HTSUS headings 6213 and 6214 and HTSUS subheadings 6117.10, 6302.22, 6302.29, 6302.52, 6302.53, 6302.59, 6302.92, 6302.93, 6302.99, 6303.92, 6303.99, 6304.19, 6304.93, 6304.99, 9404.90.85 and 9404.90.95, except for goods classified under those headings or subheadings as of cotton or of wool or consisting of fiber blends containing 16 percent or more by weight of cotton:
>
> (i) The country of origin of the good is the country, territory, or insular possession in which the fabric comprising the good was both dyed and printed when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing;
>
> (ii) If the country of origin cannot be determined under (i) above, except for goods of HTSUS subheading 6117.10 that are knit to shape or consist of two or more component parts, the country of origin is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

* * * * * * *

Since subheadings 9404.90.85 and 6304.93, HTSUS, are provided for in paragraph (e)(2) and subparagraph (i) does not determine the country of origin, Customs must examine subparagraph (ii). Subparagraph (ii) states that the country of origin is the country in which the fabric was formed, indicating that the country of origin of both the comforter and the pillow sham is Pakistan.

The origin determination for these goods does not, however, conclude with paragraphs (c)(2) and (e)(2) because, as addressed previously, the comforter, pillow sham and all of the other components of the "Bed in a Bag" bedding set qualify as "originating" in Canada resulting in the applicability of 19 C.F.R. 102.19, commonly referred to as the NAFTA preference override. *See* 19 C.F.R. 181.1 (q). The NAFTA preference override provides, in pertinent part:

> (a) Except in the case of goods covered by paragraph (b) of this section, if a good which is originating within the meaning of § 181.1 (q) of this chapter is not determined under 102.11(a) or (b) or 102.21 to be a good of a single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin (see § 181.11 of this chapter) has been completed and signed for the good. 19 C.F.R. 102.19.

The comforter and the pillow sham meet the requirements of the NAFTA preference override of section 102.19. The articles are both NAFTA "originating" goods as set forth by the requirements of 19 C.F.R. 181.1 (q), have not been determined to be a good of a single NAFTA country under 19 C.F.R. 102.21 (the textile and apparel rules of origin) and have undergone production other than minor processing in a NAFTA country. *See* 19 C.F.R. 102.17 (addressing "non-qualifying operations"). In this instance, the fabric for the comforter has been cut, sewn, stuffed and quilted into the finished comforter and the fabric for the pillow sham has been cut and sewn into the finished pillow sham in Canada. The finished comforter and pillow sham are then packed in Canada for retail sale with the pillowcase, fitted sheet, flat sheet and the bed skirt. *See generally* HQ 562498; HQ 965696; and HQ 965309.

Customs, relying on the NAFTA preference override, concludes that the comforter and pillow sham undergo more than minor processing in Canada, the last NAFTA country in which the articles undergo any processing. The country of origin of the comforter and pillow sham is, therefore, Canada, the last NAFTA country in which the articles underwent more than minor processing.

Set

The "Bed in a Bag," consisting of the comforter, pillow sham, bed skirt, pillowcase, flat sheet and fitted sheet, are classified in accordance with NY I80828 as "goods put up in sets for retail sale" pursuant to GRI 3(b). The comforter is the component of the set that provides the essential character. *See generally* HQ 562498; HQ 965696; and HQ 965309.

Quota/Visa Requirements

The comforter and pillow sham, although part of a set for classification purposes, are treated for quota and visa purposes as if they are imported separately. Section 204 of the Agricultural Act of 1956, 7 U.S.C. 1854, as amended, authorizes the President to limit importation into the United States of any textile or textile product. The President, in Executive Order 11651, 37 Fed. Reg. 4699 (Mar. 4, 1972), delegated the authority to supervise and implement all textile agreements and arrangements negotiated pursuant to Section 204 to the Committee for the Implementation of Textile Agreements (CITA).

CITA requires, as originally set forth in 53 Fed. Reg. 52765 (Dec. 29, 1988), clarified in 54 Fed. Reg. (Aug. 24, 1989) and reconfirmed in 67 Fed. Reg. 12977 (Mar. 20, 2002) that:

> all applicable visa and quota requirements will apply for textiles and their products which are classified as parts of a set. The rule applies to all items which, if imported separately, would require a visa and the reporting of quota.

The comforter, if imported separately, is a NAFTA "originating" good and qualifies to be marked as country of origin Canada. The pillow sham, if imported separately, would not, however, qualify as a NAFTA "originating" good. The comforter is, therefore, a good of Canada for quota/visa purposes and the pillow sham is a good of Pakistan for quota/visa purposes. *See generally* HQ 965696; and HQ 965309.

The comforter would qualify as a NAFTA originating good because when the Pakistani fabric, classifiable in heading 5513, HTSUS, is made in Canada into the comforter shell, a

transitional article in the production of the comforter is produced. The transition article, the comforter shell classifiable in heading 6307, HTSUS and deemed non-originating as permitted by the NAFTA rules of origin "self-produced material" rule, thereafter makes the tariff shift to subheading 9404.90, HTSUS. *See* 19 C.F.R. Part 181 Appendix section 4 (8); and GN 12 (t)/94.7.

This situation does not occur with the pillow sham. The pillow sham is not made into a transitional article from which an applicable tariff shift occurs prior to it being made into the final article. The pillow sham does not meet the definition of "self-produced material" when it is imported separately from the "Bed in a Bag" set. The pillow sham meets the definition of "self-produced material" in the instant case because when it is imported as a part of the "Bed in the Bag" set, it is the set that is the good. If the pillow sham was imported separately, there is no self-produced material, only the non-originating material, the fabric, and the final good, the pillow sham.

Holding:

New York Ruling Letter I80828 (May 10, 2002) is modified.

The "Bed in a Bag," consisting of the comforter, pillow sham, bed skirt, pillowcase, flat sheet and fitted sheet, classified as a set in subheading 9404.90.8522, Harmonized Tariff Schedule of the United States Annotated, is entitled to the "Special" Column 1 "CA" NAFTA rate of duty.

The Special Column 1 "CA" NAFTA Rate of Duty is FREE.

There are no quota reporting or visa requirements for goods of Canada. The applicable textile quota category, if the comforter classified in subheading 9404.90.8522, HTSUSA, was not a good of Canada, would be category: 666.

The applicable textile quota category for the pillow sham, which if imported separately would be classifiable in subheading 6304.93.0000, HTSUSA, is category: 666. The pillow sham, for quota reporting and visa requirements, is a product of Pakistan.

There are no applicable quota/visa requirements for products of World Trade Organization (WTO) member-countries as textile quota category 666 has been partially integrated for the relevant subheading. The textile category number above applies to merchandise produced in countries that are not members of the WTO.

The designated textile and apparel category may be subdivided into parts. If subdivided, any quota and visa requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent negotiations and changes, to obtain the most current information available, we suggest your client check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)* an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs Service office. The *Status Report On Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Web site at www.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

MYLES B. HARMON,
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Commercial Rulings Division.

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